

IN THE HIGH COURT OF KARNATAKA AT BANAGALORE

(ORIGINAL JURISDICTION)

W.P. NO. _____/2020

BETWEEN:

The National Federation of the Blind,
Having its Registered Office at:
Plot P.21, Sector 6,
M.B. Road, Pushpavihar, New Delhi 110017
And its Karnataka Branch Office at:
No. S372, Bharat Nagar, 2nd
Phase, Near Karnataka Bank
Magadi Road
Bangalore-560091
Represented by its General Secretary,
Mr. Gautam Prakash Agarwal.

...PETITIONER

AND

1. The Karnataka Public Service Commission
Udyog Soudha,
Bangalore-560001
Represented by its Chairman
2. State Government of Karnataka
Department of Personnel and Administrative Reforms
No. 32, Vidhana Soudha
Bangalore 560001
Represented by its Principal Secretary
3. The State Government of Karnataka
Department of Women and Child Welfare
M.S. Building
Bangalore 560001
Represented by its Principal Secretary
4. The Commissioner for Disabilities
No.55, Abhaya Sankeerna, 2nd Floor,
Karnataka Slum Development Board Building,
Risaldar Street (Plat Form Road),
Sheshadripuram,
Bangalore-560 020.
5. Union of India
Ministry of Social Justice & Empowerment
Department of Empowerment
Of Persons with Disabilities
Pt. Antyodaya Bhawan, 5th Floor
CGO Complex, Lodhi Road

New Delhi – 110001
Represented by its Secretary

...RESPONDENTS

**MEMORANDUM OF WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE
CONSTITUTION OF INDIA**

The Petitioner above-named most respectfully submit as follows:

1. This Petition is filed in public interest by the Petitioner on behalf of all visually impaired persons in the State of Karnataka to protect their rights for reasonable accommodation in the upcoming public examinations announced by the 1st Respondent Karnataka Public Service Commission (KPSC) for the selection of Gazetted Probationers and ensure equal opportunity to seek employment as provided for under the Rights of Persons with Disabilities Act, 2016. The 1st Respondent issued a Notification dated 31-01-2020 bearing No. PSC/E (1) GP/2020 calling for applications from interest candidates to fill up the vacancy in the posts of Probationary Officers under group A & B. While the Notification provides for conducting an examination to fill the vacant posts, around 800 visually challenged candidates who are applicants for the test, have been instructed to undertake an additional medical test prior to the examination without any legal basis, when they already have a disability certificate. The Preliminary Examination is scheduled on 24th Aug 2020 and the 1st Respondent KPSC has not made any arrangements to form a panel of scribes for the visually impaired candidates and have asked the candidates to get their own scribes. It has also not provided compensatory additional time of 20 mins per hour and all of this is in violation of the various Office Memoranda of the 5th Respondent Ministry of Social Justice & Empowerment. Thus, aggrieved by the actions of the Respondents, the Petitioner has filed the Petition in public interest.

ARRAY OF PARTIES

2. The Petitioner No. 1 is the National Federation of the Blind. It is an apolitical federation of visually impaired and low vision people formed in 1970 with the philosophy of "let the Blind Lead the Blind". The Petitioner Federation strives for equality of opportunity for the Blind and visually impaired persons in the field of education, training,

employment etc. The Federation is serving the blind community through its various Welfare programmes in the State. The Petitioner Federation presently has around 40000 members all over the country. The Petitioner is represented by its General Secretary.

3. The 1st Respondent is the Karnataka Public Service Commission which has passed the impugned Notification dated 31.01.2020 and is in charge of conducting examinations and recruitment for appointments to services of the State of Karnataka.
4. The 2nd Respondent is a State Department which is in charge of the employment of eligible persons to different posts in the State.
5. The Respondent No. 3 is the Department of the State Government which deals with all matters pertaining to enforcement of rights of persons with disability.
6. The Respondent No. 4 is the authority appointed by the State Government under the Rights of Persons with Disabilities Act, 2016. The Respondent No. 4 has among other duties, the duty to safeguard the rights of persons with disabilities and to co-ordinate with the State Government in implementation of laws, rules, bye-laws, regulations, orders, guidelines etc. issues by the State Government for the Welfare and protection of rights of persons with disabilities.
7. The Respondent No.5 is the Ministry of Social Justice and Empowerment under the Union of India, which has issued various guidelines and Office Memoranda on conducting examinations for persons with benchmark disabilities.

BRIEF FACTS

8. It is submitted that the 1st Respondent KPSC issued Notification bearing No. PSC/E (1) GP/2020 dated 31.01.2020 calling for applications from candidates to be appointed as Gazetted Probationers for both Group A and Group B posts. It seeks to appoint 106 Gazetted Probationary Officers from all across the State. Presently there are more than 1000 persons with disabilities who have applied, among whom 800 are visually

impaired persons (blind and low visioned) who have submitted their applications for these posts in response to this Notification. It is submitted that the impugned Notification proposes a preliminary examination and a final examination.

(A copy of the Notification dated 31.1.2020 bearing no. No. PSC/E (1) GP/2020 is annexed herein and is marked as **ANNEXURE – A**)

9. It is submitted suddenly on 8.8.2020, the 1st Respondent issued a Press Release bearing No. PASC E (1) 2195/2020-21 dated 08.08.2020 instructing all blind and low vision applicants of the examination to undertake a medical examination in five designated hospitals between 10th to 13th August, 2020. The 1st Respondent also released a list of all the visually impaired candidates' names and the name of the hospital and date and time that they are required to go for their medical test. In this short period of time and during the COVID pandemic where travel to far flung areas is unsafe and extremely difficult for visually impaired persons since they need a person accompanying them for their travel, it is submitted that many applicants were unable to appear for this medical test.

(A copy of the notice dated 8.8.2020 bearing No. PASC E (1) 2195/2020-21 is annexed herein and is marked as **ANNEXURE – B**)

(A copy of the list of blind / low Vision candidates for Medical test is annexed herein and is marked as **ANNEXURE – C**)

10. Thereafter on 11.8.2020, it was announced that the Preliminary Examination has been scheduled to be held on 24.08.2020 and this was announced through a press release dated 11.08.2020.

(A copy of the press release dated 11.08.2020 is annexed herein and is marked as **ANNEXURE – D**)

11. It is submitted that for the preliminary examination, the 1st Respondent KPSC has not provided any details about whether additional compensatory time would be provided for persons with disabilities and also how they can get their own scribes or whether they would be provided the facility of a scribe.

12. It is submitted that the 5th Respondent Ministry of Social Justice and Empowerment has issued several Office memoranda for laying down Guidelines for conducting written examinations for persons with disabilities. Office Memorandum dated 26.2.2013 issued by the Ministry of Social Justice and Empowerment lays down that:

- (i) The facility of scribe / reader should be allowed to any person with disability
- (ii) The candidate should have the option for opting for his own scribe / reader or request the examination body to provide a scribe. In such situations where the examining body has provided for a scribe, the candidate must be allowed to meet the scribe a day before the exam to confirm that the scribe is suitable.
- (iii) The disability certificate issued by the competent medical authority should be accepted.
- (iv) Compensatory time should not be less than 20 minutes per hour of examination for persons using a scribe or reader or one hour additional time for a 3 hours examination which can also be increased.

(A copy of the Office Memorandum dated 26.2.2013 is annexed herein and is marked as **ANNEXURE – E**)

13. Thereafter the 5th respondent issued new guidelines for written examinations for Persons with Benchmark Disabilities vide Office Memorandum issued by the Ministry of Social Justice & Empowerment dated 29.08.2018 bearing F.No. 34-02/2015-DD-III which states as follows:

- (i) In case of persons with benchmark disabilities in the category of blindness, locomotor disability (both arms affected-BA) and cerebral palsy, the facility of scribe/reader/lab assistant shall be given, if so desired by the person.
- (ii) The candidate should have the discretion of opting for his own scribe/reader/lab assistant or request the Examination Body for the same. The candidates should be allowed to meet the scribe two days before the examination so that the candidates get a chance to check and verify whether the scribe is suitable or not.
- (iii) Compensatory time should not be less than 20 minutes per hour of examination

for persons who are allowed use of scribe/reader/lab assistant.

- (iv) Compensatory time of 20 minutes per hour should be provided to all persons with benchmark disabilities whether they use a scribe or not.

(A copy of the Office Memorandum dated 29.8.2018 bearing F.No. 34-02/2015-DD-III is annexed herein and is marked as **ANNEXURE – F**)

14. It is submitted that thereafter the 5th Respondent Ministry issued an Office Memorandum dated 28.11.2018 stating that taking in account the order of Hon'ble High Court of Delhi in the matter of *Aditya Narayan Tiwari & Anr. v. Union of India & Anr.*, all Ministries/Departments were requested to issues appropriate advisory to all examining bodies under their administrative control to make a panel of scribes/readers/lab assistants at the District/Divisional/State Level in terms of the guidelines of the Union dated on 29.08.2018. Thereafter it issued another Office Memorandum dated 1.1.2019 stating that unless such a panel of scribes is formed, any of the departments conducting exams shall not conduct exams in terms of guidelines dated 29.8.2018 but shall follow the guidelines dated 26.2.2013. The Ministry also issued a Corrigendum on 8.2.2019 stating that even persons with disabilities who do not use scribes should be given compensatory time.

(A copy of the order dated 15.11.2018 passed in W.P. No. 12222/ 2018 by the Hon'ble Delhi High Court is annexed herein and is marked as **ANNEXURE – G**)

(A copy of the Office Memorandum dated 28.11.2018 bearing F.No.34-02/2015-DD-III (pt) is annexed herein and is marked as **ANNEXURE – H**)

(A copy of the Office Memorandum dated 1.1.2019 is annexed herein and is marked as **ANNEXURE – J**)

(A copy of the order of the Delhi High Court dated 4.12.2018 passed in W.P. No. 4.12.2019 is annexed herein and is marked as **ANNEXURE – K**)

(A copy of the Corrigendum dated 8.2.2019 is annexed herein and is marked as **ANNEXURE – L**)

15. It is submitted that the 5th Respondent Ministry of Social Justice & Empowerment, Department of Empowerment of Persons with Disabilities further notified on 8.11.2019

and directed all States/UTs to issue guidelines for conducting written examination for Persons with Benchmark Disabilities in line with Central Guidelines dated 29.09.2018 read with the corrigendum dated 8-02-2019 was provided for in the said notification. (A copy of the letter dated 08.11.2019 bearing F.No. 05-16/2019-DD-III is annexed herein and is marked as **ANNEXURE – M**)

16. It is submitted that the impugned Notification dated 31.01.2020 issued by 1st Respondent (KPSC) calling for applicants for recruited to the posts of gazetted probationers does not enlist specific guidelines or make any reference to government rules that would be applicable with respect to conducting this written examination for persons with benchmark disabilities. However, the 1st Respondent KPSC has issued a Government Order dated 30.10.2007, in which the procedure for availing scribe facility for blind and low vision examinees and for compensatory time is provided as follows:

(i) The examinees have to arrange their own scribes in the Preliminary Examination and are forced to opt the scribe provided by the KPSC in the Mains.

(ii) The examinees are only granted 10 minutes per hour as compensatory time.

(A copy of the Government Order dated 30.10.2007 bearing No. C.A.Su.Ee. 74 Senani 2006 is annexed herein and is marked as **ANNEXURE – N**)

17. These KPSC guidelines do not take into account the requirements for reasonable accommodation for the preliminary examination to be conducted by candidates with blindness and low vision and is scheduled on 24.8.2020. Visually impaired candidates have been made to undergo a separate medical test which is completely illegal, and many candidates have been unable to get this medical test done. Many candidates who do not have the facility to arrange for a scribe as not being provided a scribe or reader by the 1st Respondent KPSC for the exams and the compensatory time of 20 minutes for per hour is not provided and instead only 10 minutes for per hour is provided. If 20 minutes is to be provided then even the examination schedule has to be suitably modified to accommodate this time.

18. It is submitted that in the interest of the visually impaired candidates, the Petitioner made a representation to the 1st Respondent (KPSC) on 10.08.2020 requesting them to consider the unified comprehensive guidelines notified by the Union Ministry of Social Justice and Empowerment dated 29-08-2018 for granting scribe and providing a 20 min per hour compensatory time for examinees with disability. Further, the Petitioner raised the special concerns of the persons with disability in the ongoing crisis of pandemic COVID-19. First, in regard to KPSC Notification requiring a medical certification from designated hospitals for those candidates availing scribe facilities, the Petitioner requested a waiver of such medical test. Second, the Petitioner requested for a postponement of the said examination until the normal conditions are resumed. The Petitioner also sent a representation to the Respondent No.4 Commissioner for Disabilities

(A copy of the representation dated 10.8.2020 addressed to the 1st Respondent KPSC is annexed herein and is marked as ANNEXURE – P)

(A copy of the representation dated 10.8.2020 addressed to the 4th Respondent Commissioner for Disabilities is annexed herein and is marked as ANNEXURE – Q)

19. Thus, being aggrieved by the action of the Respondents and having no other alternative and equally efficacious remedy, the Petitioner has filed this petition before this Hon'ble Court. The Petitioner has not filed any other petition on the same cause of action before this court or any other court. This petition is filed on the following, among other grounds:

GROUNDS

20. **THAT** the Rights of Persons with Disabilities Act 2016 ("RPWD Act") under section 3 (5) and Section 20 (2) provides that appropriate Government shall take necessary steps for the reasonable accommodation for persons with disability and ensure non-discrimination in employment. As per S. 2 (y) of the Act, the principle of 'Reasonable Accommodation' requires the Government to take necessary and appropriate modifications and adjustments, without imposing disproportionate or undue burden in

a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others. In the present case the reasonable accommodation is mandated in the form of provision of scribes and compensatory time for candidates with disabilities, especially persons with visual impairment and is laid down by the Central Government guidelines. The non-compliance of these measures by the 1st Respondent KPSC amounts to violating the provisions of the RPWD Act in not providing reasonable accommodation and hence deserves the intervention of this Hon'ble Court.

21. **THAT** the 1st Respondent KPSC has failed to implement the unified Guidelines for conducting written examinations for Persons with Benchmark Disabilities as notified by the 5th Respondent Union Ministry of Social Justice & Empowerment which provide that additional compensatory time of 20 minutes per hour would be provided to persons with disabilities for all examinations and also all the Office Memoranda which state that the examining body will form a panel of scribes / readers for selection exams and that the scribes should be allowed to meet the candidate before the exam, and unless this panel of scribes is formed no examinations can be conducted. Despite these guidelines, the 1st Respondent KPSC has not formed any panel of scribes and is in fact asking the candidates to provide their own scribes as per its Order dated 30.10.2007., which was issued prior to the RPWD Act 2016 was enacted and hence cannot be relied upon and deprives visually impaired candidates of their right to reasonable accommodation under the RPWD Act.

22. **THAT** the Rights of Persons with Disabilities Act 2016 ("RPWD Act") under Section 57(1) provides that the appropriate government shall designate persons as certifying authorities who shall be competent to issue a certificate of disability to those who have applied for such an issuance. The said certificate of disability has been produced by the candidates at the time of application by the visually impaired candidates for the examination that is to be conducted on 24.08.2020. In this regard, the notification of the 1st Respondent (KPSC) dated 08.08.2020 instructing visually impaired candidates to undergo an additional medical test prior to the examination is not only arbitrary in nature but is also in violation of the said provisions of the RPWD Act 2016.

23. **THAT** in light of the ongoing COVID -19 pandemic, the 1st Respondent has failed to consider the health and safety of the vulnerable examinees instructed to undergo a further medical test when all candidates with benchmark disabilities already have a disability certificate as per section 57 of the RPWD Act. It is particularly not safe for visually challenged examinees to participate in the medical test as they mainly depend on touch for performing their activities and it has been established that the infection of COVID-19 is also transmitted through touch. Moreover, the 1st Respondent gave a short notice of two days for 800 visually impaired participants to approach the designated hospital and obtain the required certificate. As most participants depend on public transportation and public assistance to travel from their native villages and towns, this action of the 1st Respondent is discriminatory to the applicants with disabilities as there is limited access to such facilities currently.

24. **THAT** It is further submitted that the rules dated 15-03-2007 followed by the 1st Respondent (KPSC) in regarding scribe facilities is not in agreement to the unified Guidelines for conducting written examination for Persons with Benchmark Disabilities notified by the Union Ministry of Social Justice & Empowerment on 29.08.2018. The said Union guidelines provide that the applicant has an option to either choose his/her own scribe or request the concerned authorities to provide the scribe in all types of written examinations. However, the rules followed by 1st Respondent provides that the applicant have to arrange their own scribe in preliminary examination and are forced to opt the scribe provided for the 1st Respondent in the main exam. To the extent the 1st Respondent is not providing the facilities to request for a scribe in preliminary examinations, it is denying the examinees with benchmark disabilities the appropriate facilities for participation in the examination.

25. **THAT** in such unrepresented times of COVID-19 pandemic, it is the responsibility of all examination authorities to provide scribe to the requested applicants and to ensure the health protection of both the examinee and the scribe.

26. **THAT** as per the order of Hon'ble High Court of Delhi in the matter of *Aditya Narayan*

Tiwari & Anr. v. Union of India & Anr vide order dated 04.12.2018 all Ministries/Departments to issues appropriate advisory to all examining bodies under their administrative control to make a panel of scribe/reader/lab assistant at the District/Divisional/State Level in terms of the guidelines of the Union dated on 29-08-2018 and until such a panel of scribes is formed provide scribes to candidates.

27. **THAT** the compensatory time provided to examinees with benchmark disabilities is not adequately allotted by the 1st Respondent (KPSC) in the rules dated 15-03-2007 and only the provision of 10 minutes per hour compensatory time by the 1st Respondent is given and are contradicting the minimum time of 20 minutes per hour as provided under the unified Guidelines for conducting written examination for Persons with Benchmark Disabilities notified by the Union Ministry of Social Justice & Empowerment on 29-08-2018 and hence needs the intervention of this Hon'ble Court.
28. **THAT** the requirement of a medical examination in designated hospitals for all visually impaired candidates registered for the examination scheduled for 24-08-2020 is a violation of the right to equality of such persons as guaranteed under Article 14 of the Constitution. The 1st Respondent is to ensure that equal opportunity compete for the public examination be provided to all candidates. To the extent that only visually impaired candidates are being required to undergo a medical test prior to the examination is denying this category of disabled persons to equal opportunity to appear for the examination.
29. **THAT** the right to equality as enshrined under Article 14 of the Constitution provides that all persons be treated equally without discrimination and that provision of special treatment be made for those categories of persons to ensure equal opportunities. Further, it ensures equality of treatment to persons who are similarly situated. The denial of the option to the visually impaired candidates to request for a scribe in case they may not be able to arrange for one and the denial of adequate compensatory time of 20 min per hour is discriminatory in nature as it proves to be disadvantageous to such persons with disabilities.

30. **THAT** the denial of scribes and additional compensatory time to persons with benchmark disabilities for the examination for the post of gazette Probationers amounts to a violation of the right to equal opportunities in public employment and the denial of the right to life of persons with disabilities as they are being disadvantaged and not provided equal opportunities.

GROUND FOR INTERIM PRAYER

31. **THAT** the 1st Respondent has failed to make guidelines and appropriate facilities for the provision of a scribe to those visually impaired candidates who request for a scribe. As per the guidelines of the Ministry dated. 29.08.2018, the examination authority must provide for facilities of a scribe for the candidates requesting the same in all public examinations. As per Office Memorandum dated 01.01.2019 of the Union Ministry of Social Justice and Empowerment and the Order of the Delhi High Court in the matter of *Aditya Narayan Tiwari & Anr. v. Union of India & Anr* vide order dated 04-12-2018, no examination shall be conducted in terms of the guidelines dated 29.08.2018 till a panel of scribes are formed by the examining bodies at the District/Divisional/State level. Accordingly, the 1st Respondent not having notified the formation of such a panel of scribes cannot conduct the examination scheduled for 24.08.2020.

PRAYER

WHEREFORE, in the light of the above facts and circumstances, the Petitioner most respectfully prays that this Hon'ble Court be pleased to:

- A. Issue a writ in the nature of mandamus or any other writ directing the 1st Respondent KPSC to provide visually impaired candidates of the examination scheduled for 24.08.2020 under the impugned Notification dated 31.10.2020, bearing No. PSC.E(I) GP/2020 Ref. No. E(1) 3037/2019-20/PSC produced as **ANNEXURE - A**, for the post of Gazetted Probationers 2017-18, for an additional compensatory time of 20 minutes per hour and atleast one-hour compensatory time provided for candidates not availing the facility of a scribe; and
- B. Issue a writ in the nature of mandamus or any other writ directing the 1st Respondent KPSC to form a panel of scribes / readers and provide for all candidates with visual

impairment the option of either getting their own scribe or providing for a competent scribe from the panel for the Preliminary Examination whose qualification is one step lower than the qualification of the candidate, and to arrange a meeting of the scribe and the applicant two days prior to the examination scheduled for 24.08.2020 as per Guidelines issued by 5th Respondent;

- C. Issue a writ in the nature of mandamus or any other writ directing the 1st Respondent KPSC to waive the requirement of additional medical examination for visually impaired candidates in order to be considered for the Preliminary Examinations for recruitment of Gazetted Probationers - Group A & B posts and for reservation to those posts; and
- D. Issue a writ in the nature of mandamus or any other writ directing the 1st Respondent KPSC to form a panel of scribes and provide additional compensatory time for the Mains Examinations for visually impaired candidates, under the impugned Notification dated 31.10.2020, bearing No. PSC.E(I) GP/2020 Ref. No. E(1) 3037/2019-20/PSC produced as **ANNEXURE – A**, for the post of Gazetted Probationers 2017-18, and
- E. Issue a writ in the nature of certiorari setting aside and quashing the Government Order dated 30.10.2007 bearing No. C.A.Su.Ee. 74 Senani 2006 produced herein as **ANNEXURE – N** and direct the 1st Respondent KPSC to frame new Guidelines for the Examinations to be conducted for candidates with benchmark disabilities in line with the guidelines of the 5th Respondent Union of India under the RPWD Act 2016;
- F. Grant any other relief, which this Hon'ble Court deems fit under the Circumstances of the case in the interest of justice and equity.

INTERIM PRAYER

Pending final disposal of the above writ petition, it is most respectfully prayed that this Hon'ble Court may be pleased to stay the conduct of the Preliminary Examinations scheduled for 24.08.2020 under the impugned Notification dated 31.10.2020, bearing No. PSC.E(I) GP/2020 Ref. No. E(1) 3037/2019-20/PSC produced as **ANNEXURE – A**, for the post of Gazetted Probationers 2017-18, till such time that the 1st Respondent KPSC forms a panel of scribes / readers as per the directions of 5th Respondent central government and provides additional time for persons with disabilities, in the interest of justice and equity.

Place: Bangalore

Date:

Counsel for the Petitioner

Rohan Kothari

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