

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

**WRIT PETITION NO.5953 OF 2014**

Sujit Shinde & Anr.

.. Petitioners

Vs.

Union Public Service Commission (UPSC)  
and Anr.

.. Respondents

Ms.Ankita Singhania with Ms.Kanchan Pamnani for the  
petitioners

Mr.V.Narayanan for respondent no.1

Mr.Ashok Shetty with Mr.Ashok R. Varma and Mr.N.D.Sharma for  
respondent nos.2 and 3

**CORAM : MOHIT S.SHAH, C.J. &  
M.S.SONAK, J.**

**DATE : 19<sup>th</sup> August, 2014**

**PC:**

(1) Both the petitioners herein are blind and are candidates at the Civil Services Examination, 2014 to be conducted by the Union Public Service Commission (UPSC), respondent no.1 herein. Preliminary exam is on 24<sup>th</sup> August,

2014.

(2) UPSC issued a notification dated 31<sup>st</sup> May, 2014 for a preliminary examination of the Civil Services Examination for recruitment to the Services and Posts mentioned in the advertisement. As regards the vacancies for which the notification was issued, it was stated as under:

“The number of vacancies to be filled on the result of the examination is expected to be approximately 1291 which includes 26 vacancies reserved for PH. Category, i.e. 12 vacancies for LDCE, 2 Vacancies for B/IV and 12 Vacancies for H.I. The final number of vacancies may undergo change after getting firm number of vacancies from Cadre Controlling Authorities.”

(3) Both the petitioners submitted their applications in response to the said advertisement. Preliminary examination is to be conducted on 24<sup>th</sup> August, 2014. The petitioners have made the following grievances in this petition which are

reiterated at the hearing:

(a) Since the notification itself indicates that the number of vacancies to be filled in on the result of the examination is approximately 1291, the number of vacancies reserved for persons with disability ought to have been notified as 39 @ 3% i.e. 13 vacancies for blind or with low vision, 13 vacancies for persons with locomotor disability or cerebral palsy and 13 vacancies for persons with hearing impairment. It is submitted that by reserving only 26 vacancies for persons with disability, the respondents are committing breach of the statutory provisions in Section 33 of “the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995” hereinafter referred to as the Disability Act.

(b) The second grievance is about the Scribe to be permitted to appear at the examination. It is submitted that while the Guidelines contained in the office memorandum

dated 26<sup>th</sup> February, 2013 issued by the Government of India, Ministry of Social Justice & Empowerment, Department of Disability Affairs permit a candidate to engage a Scribe without any restrictions on educational qualification, marks scored, age or other restrictions, the proforma of the declaration in the advertisement provides the educational qualification of the Scribe as brought by the candidate should not be higher than graduation.

(c) Thirdly, it is submitted that the general instructions in the notification regarding the time duration for blind candidates runs counter to the guidelines contained in the Office Memorandum dated 26<sup>th</sup> February, 2013. The said Office Memorandum provides for compensatory time of additional 20 minutes per hour of examination for persons who are making use of the scribe /reader/lab assistant but the general instructions in the advertisement provide that blind candidates will be allowed to write the examination with the help of scribe with extra time @ 10 minutes per

hour.

(d) There are also other submissions regarding a few other issues arising in case of blind candidates appearing at such examination.

(4) Taking first contention urged on behalf of the petitioners, the learned counsel for the petitioner has invited our attention to the provisions of section 33 of the Disability Act and the decision of the Supreme Court in the case of Union of India and another vs. National Federation of the Blind and others<sup>1</sup> and the Office Memorandum dated 3<sup>rd</sup> December, 2013 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training. Section 33 reads as under:

“33. Reservation of posts.—Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three

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1 (2013) 10 SCC 772

per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from—

- (i) blindness or low vision;
- (ii) hearing impairment;
- (iii) locomotor disability or cerebral palsy,

in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

(5) In the case of National Federation of the Blind (Supra), the Supreme Court has held that Section 33 establishes vividly, the intention of the legislature viz. reservation of 3% for differently abled persons should have to be computed on the basis of total vacancies in the strength of a cadre and not just on the basis of the vacancies available in the identified posts. After referring to the proviso to section 33 of the Disability Act, the Supreme Court has observed as under:

“The proviso also justifies the above said interpretation that the computation of reservation has to be against the total number vacancies in the cadre strength and not against the identified posts. Had the legislature intended to mandate for computation of reservation against the identified posts only, there was no need for inserting the proviso to Section which empowers the appropriate Government to exempt any establishment either partly or fully from the purview of the Section subject to such conditions contained in the notification to be issued in the Official Gazette in this behalf. Certainly, the legislature did not intend to give such arbitrary power for exemption from reservation for persons with disabilities to be exercised by the appropriate Government when the computation is intended to be made against the identified posts.”

The Supreme Court ultimately held as under:

“52 Thus, after thoughtful consideration, we are of the view that the computation of reservation

for persons with disabilities has to be computed in case of Group A, B, C and D posts in an identical manner viz., "**computing 3% reservation on total number of vacancies in the cadre strength**" which is the intention of the legislature. Accordingly, certain clauses in the OM dated 29.12.2005, which are contrary to the above reasoning are struck down and we direct the appropriate Government to issue new Office Memorandum(s) in consistent with the decision rendered by this Court.

53 Further, the reservation for persons with disabilities has nothing to do with the ceiling of 50% and hence, *Indra Sawhney (supra)* is not applicable with respect to the disabled persons.

54 We also reiterate that the decision in *R.K. Sabharwal (supra)* is not applicable to the reservation for the persons with disabilities because in the above said case, the point for consideration was with regard to the implementation of the scheme of reservation for SC, ST & OBC, which is vertical reservation, whereas reservation in favour of persons with disabilities is horizontal."

Thus, the Supreme Court gave directions to the Government of India to issue an appropriate order modifying the Office Memorandum dated 29<sup>th</sup> December, 2005 and the subsequent Office Memorandums consistent with the orders of the Supreme Court. In compliance with the above directions, Government of India has issued Office Memorandum dated 3<sup>rd</sup> December, 2013.

(6) Having regard to the fact that the Government of India has already notified 1291 vacancies, in our view it is not necessary to discuss this issue any further. No affidavit in reply has been filed on behalf of Government of India and the stand of the UPSC in their affidavit in reply dated 8<sup>th</sup> August, 2014 is that it is for the Cadre Controlling Authorities to certify that 1% of the vacancies are reserved for each of the three sub-categories of PH while reporting the relevant vacancies to UPSC. It is the case of the UPSC that the Cadre Controlling Authorities are required to give a certificate in a prescribed proforma to the effect that while submitting the vacancies for PH categories, the

requirements of the PWD Act, 1995 and the policy relating to reservation for persons with disabilities have been taken care of while sending their requisitions. In the absence of any affidavit on behalf of the Government of India and in absence of any such certificate of the Cadre Controlling Authority, **the Respondents shall proceed on the basis that the respondents are required to reserve 3% of 1291 vacancies for persons with disability, 1% each for blind persons or persons with low vision, 1% each for persons with locomotor disability or cerebral palsy and 1% each for persons with hearing impairment. In other words, each category is entitled to have reservation of 13 vacancies aggregating to total 39 vacancies to be reserved for persons with disability, out of 1291 vacancies.**

(7) The learned counsel for the Government of India sought to contend that the question of working out the exact number of candidates will arise at the time of appointment and not at this stage. We are not inclined to accept this submission for the simple reason that the UPSC will be preparing the select

list / wait list of successful candidates on the basis of the vacancies reserved for a particular category. Even before preparing the select list / wait list, UPSC has to decide how many candidates should be called for the main examination and how many should be called for the oral interview. At all stages, also, UPSC would have to take into account the number of vacancies which have to be reserved for each category. Accordingly, we direct that UPSC as well as Government of India shall proceed on the basis that number of vacancies reserved for persons with disability is 39, 1/3<sup>rd</sup> being reserved for each category as per the provisions of Section 33 of the Disability Act.

(8) Coming to the next question about educational qualification of the Scribe, the learned counsel for the petitioner relies on Guideline V in the Office Memorandum dated 26<sup>th</sup> February, 2013 of Government of India :

“V Criteria like educational qualification,

marks scored, age or other such restrictions for the scribe/reader/lab assistant should not be fixed. Instead, the invigilation system should be strengthened, so that the candidates using scribe/reader/lab do not indulge in malpractices like copying and cheating during the examination.”

(9) It is true that the above Guidelines does not contemplate imposing any restriction on the educational qualification of the Scribe to be engaged by the candidate. However, in the affidavit in reply, UPSC has justified its stand of prescribing a maximum educational qualification which a Scribe can possess. It is submitted that for Civil Services, preliminary examination has an Objective Type Test where the correct answer from four alternatives is required to be marked by shading the appropriate circle. Therefore, a Scribe should be able to read Hindi or English version of the questions effectively. Therefore, a Scribe who is of Graduate or undergraduate level can effectively assist the Visually Challenged candidate. We may note that before the Guidelines were prepared, the Government of India had sought comments of UPSC on the recommendation

at the meeting held on 19<sup>th</sup> February, 2008 for framing a policy of written examination for persons with disability. The relevant part of the UPSC Minutes read as under :

<b>Recommendations</b>	<b>Comments of UPSC from the points of view of Examination conducted by them</b>
<p>R.No.V:- Criteria like educational qualification, marks scored, age or other such restrictions for the scribe/reader/lab assistant should not be fixed. Instead, the invigilation system should be strengthened, so that the candidates using scribe/reader/lab assistant don't indulge in mal-practices like copying and cheating during the examination.</p>	<p>As per the standing instructions of UPSC, there are certain eligibility criteria for the scribes for visually impaired candidates. The eligibility criteria ought to be retained because the object of providing scribe is to aid the disabled in writing his/her answers. A graduate or under-graduate can work as a scribe. If this prescription is removed, the candidates may bring a scribe who is more qualified and who can aid the candidate in not only writing the answers spelt out by the candidate but also improving or correcting the wrong answers. Even with a greater degree of invigilation it would not be possible to thwart such attempts in the objective type papers to a large extent. It is felt that no amount of invigilation would effectively obviate such malpractices in the conventional papers, which are descriptive.</p>

<p>R.No.VI:- There should also be flexibility in accommodating last movement change in scribe/ reader/ lab assistant in case of emergency. Similarly, the candidates should be allowed to take more than one scribe/ reader or writing different papers especially for languages.</p>	<p>With reference to item no.(VI) of the recommendations, it may be stated that for CS (M) Examination each candidate is provided with two scribes by the Commission/Coordinating Supervisor for writing the papers so that in case the candidate does not find one scribe suitable, he/she can take help from the other scribe. In addition to above, each paper one or two scribes are also kept in reserve for meeting any unforeseen situation. In case of CS (P) Examination, a pool of reserve scribes is also kept so that if the candidate does not find one scribe suitable, he/she can ask for a replacement of scribe. Union Public Service Commission has not received any complaint from any candidate on this account so far.</p>
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(10) Thus, the comments of the UPSC, that a candidate without any restriction on the educational qualification of the scribe may enable a candidate to bring a scribe who is more qualified than the candidate who is not only writing the answers spelt out by the candidate but also improving or correcting the wrong persons was taken into consideration by the Government of India before framing the Guidelines which are found in the

Office Memorandum dated 26<sup>th</sup> February, 2013 at Exhibit 'B' to the Writ Petition.

(11) We are, therefore, of the view that the Guideline V in the above Office Memorandum cannot be allowed to be whittled down as a general rule, as contended on behalf of the UPSC. Even so, while accepting the petitioners' contention that Guideline V does not contemplate general restriction on educational qualification of the scribe, in the facts and circumstances of the case, since we are concerned with the preliminary examination being conducted by the UPSC where only objective type questions are going to be asked and the candidate is only required to mark one out of four alternate answers, permitting the petitioners who are visually impaired, to engage scribe with the qualification of graduation cannot be said to be unreasonable.

(12) As regards the third contention, about the duration of the examination where the blind candidates are permitted to

engage scribe, the petitioners are on a firm ground. Guideline XI in the Office Memorandum dated 26<sup>th</sup> February, 2013 reads as under:

“XI The word “extra time or additional time” that is being currently used should be changed to “compensatory time” and the same should not be less than 20 minutes per hour of examination for persons who are making use of scribe/reader/lab assistant. All the candidates with disability not availing the facility of scribe may be allowed additional time of minimum of one hour for examination of 3 hours duration which could further be increased on case to case basis.”

(emphasis supplied)

In spite of the aforesaid categorical guideline, in their notification dated 31<sup>st</sup> May, 2013 UPSC provided only additional 10 minutes per hour. The said instruction cannot be allowed to operate and **UPSC shall grant the candidates engaging the services of scribes to have additional 20 minutes per hour and necessary instruction shall be issued to all the examination centres immediately.**

(13) The learned counsel for the petitioner has made submissions on a few other issues like requirement of a candidate with low vision to have larger fonts in the examination paper. Guideline VII specifically provides as under:

**“VII Persons with disabilities should be given the option of choosing the mode for taking the examinations i.e. in Braille or in the computer or in large print or even by recording the answers as the examining bodies can easily make use of technology to convert question paper in large prints, e-text, or Braille and can also convert Braille text in English or regional languages.”**

(emphasis supplied)

(14) The learned counsel for the petitioner invited our attention to the proforma declaration to be submitted at the time of submitting applications in response to the notification. The proforma declaration does not contain any heading indicating that persons with low vision are at liberty to request for larger fonts or larger print. We are, therefore, of the view that UPSC

shall make necessary modification in the proforma declaration for future examination but as far as the examination scheduled to be held on 24<sup>th</sup> August, 2014 is concerned, and also for the main examination to be conducted hereafter, **UPSC shall publish a notice on its website indicating that candidates with low vision are at liberty to request for question papers with larger print or larger fonts or any other request as per the Guidelines. This shall be done immediately and UPSC shall also permit such candidates to make such request through emails.**

(15) Guideline XII provides as under:

“XII The candidates should be allowed to use assistive devices like talking calculator (in cases where calculators are allowed for giving exams), tailor frame, Braille slate, abacus, geometry kit, Braille measuring tape and augmentative communication devices like communication chart and electronic devices.”

(16) It is directed that the UPSC shall follow the above Guidelines and all other Guidelines contained in the Office Memorandum dated 26<sup>th</sup> February, 2013.

(17) The Petition is allowed in the above terms.

Parties to act on authenticated copy of this order which can be uploaded on the website.

**CHIEF JUSTICE**

**(M.S.SONAK, J.)**