

HIGH COURT OF MADHYA PRADESH: JABALPUR

(Division Bench)

Writ Petition No. 19833/2017

Rashmi Thakur

.....PETITIONER

Versus

High Court of M.P. & others

..... RESPONDENTS

CORAM :

Hon'ble Shri Justice Hemant Gupta, Chief Justice

Hon'ble Shri Justice Vijay Kumar Shukla, Judge

Appearance:

Shri Surendra Verma, Advocate for the petitioner.

Shri Anshuman Singh, Advocate for the respondents 1 and 2.

Whether Approved for Reporting : Yes

Law Laid Down:

- The Rights of Persons with Disabilities Act, 2016 has made a departure from the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 as the reservation for the physically disabled candidates is not dependent on any condition. The reservation can be denied only if any Government establishment is exempted from the provisions of the Act by the Chief Commissioner or the State Commissioner. In absence of any decision to exempt the High Court from the provisions of the reservation, the High Court was bound to reserve post for the visually handicapped candidates.
- Though the reservation of posts by the Government of India or the Notification No.16-15/2010-DD-III dated 29th July, 2013 issued by the Government of India may not be applicable to the posts under the State but they provide sufficient guidelines for identifying the posts meant for physically disabled candidates. The post of Judicial Magistrate has been identified as the one which can be filled by the blind and the low vision candidates. Therefore, taking a clue from the Notification published by the Central Government in respect of posts falling in Group A, we find that the decision of the High Court not to permit a facility of

scribe and to reserve the posts for visually handicapped candidates violates the provisions of the Act.

Followed:

- AIR 1993 SC 1916 (National Federation of Blind vs. UPSC and others);
- (2004) 11 SCC 1 (Indian Banks' Association, Bombay and others vs. Devkala Consultancy Service).
- (2010) 7 SCC 626 (Govt. of India and Another vs. Ravi Prakash Gupta and Another);
- (2013) 10 SCC 772 (Union of India and Another vs. National Federation of the Blind and others).
- Division Bench judgment of High Court for the State of Telangana and Andhra Pradesh in W.P. No.31033/2016 (Arepalli Naga Babu vs. Hon'ble High Court of Judicature at Hyderabad, for the State of Andhra Pradesh and for the State of Telangana, Hyderabad) dated 14.11.2016
- Notification No.16-15/2010-DD-III dated 29th July, 2013 issued by the Government of India
- Office Memorandum F. No.16-110/2003-DD.III dated 26th February, 2013 issued by the Government of India, Ministry of Social Justice & Empowerment, Department of Disability Affairs.

Significant Paragraph Nos. : 7 to 20

Reserved on : 18.04.2018

ORDER

(Passed on this 3rd day of May, 2018)

Per : Hemant Gupta, Chief Justice:

The petitioner is a visually challenged person, who has a disability of 75% as declared by the District Medical Board. She has been suffering from Microphthalmia in the right eye and Coloboma of Iris in the left eye as per certificate (Annexure P-1). The petitioner after completion of Law

degree (LL.B.), enrolled herself with the State Bar Council of Madhya Pradesh on 15.06.2013 and is a Member of District Bar Association, Jabalpur.

02. An advertisement was issued by the High Court on 02.08.2017 (Annexure P-7) for filling up of posts of Civil Judge Class-II (Entry Level) which included 47 posts for Un-reserved category, 13 for Other Backward Class, 15 for Scheduled Castes and 19 posts for Scheduled Tribes. The advertisement contemplated that 2% posts would be reserved for Orthopaedically Handicapped candidates. Since there was no reservation provided for visually challenged candidates, the petitioner submitted a representation, which was rejected vide communication dated 02.08.2017 (Annexure P-8). In fact, the petitioner had submitted a representation even in respect of previous selection process.

03. The contention of the learned counsel for the petitioner is that the reservation has to be provided in terms of the Rights of Persons with Disabilities Act, 2016 (for short "the Act"). The provisions of the Act mandate the reservation for the low vision and blind candidates. The petitioner refers to a Notification No.16-15/2010-DD-III dated 29th July, 2013 issued by the Government of India by which the posts have been identified for the persons with disabilities in Group A. As many as 881 posts have been identified, which can be filled from amongst the persons who have disability including the visual disability. The post of Judicial Magistrate falls at Serial No.466 (Annexure P-13). The relevant clause of the same reads as under:-

**POSTS IDENTIFIED FOR BEING HELD BY PERSONS WITH
DISABILITIES (OH including CP & LC, VH AND HH) IN
GROUP A**

Sl. No.	Designations	Physical Requirement	Categories of Disabled suitable for jobs	Nature of work performed	Working conditions/ Remarks
1	2	3	4	5	6
***			***		***
466	Judges/ Magistrates Subordinate in Lower Judiciaries	S.ST.RW.C	OA OL BL B.LV	Deals with Civil and Criminal cases by adopting established procedure both under Civil and Criminal Codes. Records evidence and pass necessary orders/ judgments.	The work is mostly performed inside. The work place is well lighted. The worker usually works alone. The VH category considered with appropriate software and bitter appliances (sic. better appliances) support. The OH category incumbents need to be considered with mobility (sic. mobility) aids and appliances

Abbreviations Used:

OH = Orthopaedically Impaired, CP = Cerebral Palsy, LC = Leprosy Cured, VH = Visually Impaired, HH = Hearing Impaired,

S=Sitting, ST=Standing, RW=Reading & Writing, C= Communication.

OA = One Arm, OL = One Leg, BL = Both Leg, B = Blind, LV = Low Vision.

04. Learned counsel for the petitioner has referred to a Supreme Court judgment reported as AIR 1993 SC 1916 (National Federation of Blind vs. Union Public Service Commission and others) as well as asserted that the order of rejection and denial of scribe is against the judgments of the Supreme Court reported as (2010) 7 SCC 626 (Govt. of India and Another vs. Ravi Prakash Gupta and Another) and (2013) 10 SCC 772 (Union of India and Another vs. National Federation of the Blind and others). Learned counsel also makes a mention that a SLP (C) No.17223/2015 (V.

Surendra Mohan vs. State of Tamil Nadu and others) is pending before the Supreme Court arising out of an order dated 05.06.2015 passed by the High Court of Madras in WP No. 10582/2015 (V. Surendra Mohan vs. State of Tamil Nadu and others) denying reservation to a visually challenged candidate, wherein, an order has been passed to keep one post reserved.

05. During the course of argument, learned counsel for the petitioner referred to an order of Division Bench of Delhi High Court in **Writ Petition (C) No.1819/2014 (Amrendra Kumar vs. Registrar General, Delhi High Court and others)** decided on 23.05.2014 wherein the posts were reserved for Physically Handicapped (Blind/Low Vision) candidates in the Advertisement issued on 18.02.2014. In fact, even in Delhi Judicial Service Examination-2011, six vacancies were advertised for persons with disability, which included five backlog vacancies for blind/low vision candidates. The petitioner asserts that in the said judgment, Delhi High Court has referred to the Office Memorandum dated 03.12.2013 and paragraph 15 of the Office Memorandum dated 29.12.2005 both issued by the Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training.

06. On the other hand, the stand of the High Court in the return is that the petitioner appeared as a candidate in the preliminary examination but could not secure the minimum cut-off marks, therefore, she is not eligible for appearing in the main examination. It is asserted that Rule 6 is the Rule of Reservation provided in Madhya Pradesh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 1994. A decision has been

taken to provide reservation to the extent of 2% to the Orthopaedically Handicapped candidates. therefore, a communication was sent for reservation of 2% seats. It is also asserted that the Act came into force on 19th April, 2017 when the Notification for the said Act was issued by the Government of India published in the Gazette of India dated 19th April, 2017 (Annexure R-3) and that no decision was taken prior to the issuance of the advertisement for providing reservation to such category of candidates except for reservation of 2% seats to the persons carrying Orthopaedic disability. The relevant assertions in the return read as under:-

"6. It is submitted that the Rights of Persons with Disabilities Act, 2016 was published in the Gazette of India dated 28.12.2016. The Government of India issued a notification under Sub Section (2) of Section 1 of the 2016 Act notifying the date of applicability of the Act as 19.04.2017. A copy of the notification dated 19.04.2017 is filed herewith and marked as Annexure R-3. Section 34 of the 2016 Act deals with provisions with regard to provide reservation to persons having different forms of disabilities including blindness and low vision. Apparently, after coming into force of the 2016 Act, a formal decision is required to be taken to provide reservation as recruitment to the post of Civil Judges is controlled by the statutory rules. In the present case, the advertisement for filling up the post of Civil Judges was issued on 02.08.2017, copy of which has already been filed by the petitioner as Annexure P-7 along with the petition. No decision was taken prior to issuance of the advertisement for providing reservation to any such category of candidates except for reservation of 2% to persons carrying Orthopaedic Disability, as aforesaid. Therefore, the petitioner cannot call upon the answering respondents to issue corrigendum in the advertisement dated 02.08.2017, more so when subsequent to the advertisement the preliminary and main examinations have already been conducted."

07. To examine the contentions of the learned counsel for the parties, certain statutory provisions of the Act need to be reproduced, which read as under:-

“34. Reservation.—(1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. 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, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

- (a) blindness and low vision;
- (b) deaf and hard of hearing;
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.”

08. A perusal of Section 34 of the Act makes it mandatory for every appropriate Government to appoint in every Government establishment not less than four percent of the total number of vacancies in the cadre strength in each group of post meant to be filled with persons with benchmark disabilities of which, one percent post is meant for blindness and low vision category candidates. In terms of Section 34 of the Act, there is no option for

every establishment but to make reservation in terms of Sub-Section (1) of Section 34 of the Act.

09. The only provision is that appropriate Government in consultation with the Chief Commissioner or the State Commissioner, may, having regard to the type of work carried out in any Government establishment exempt such Government establishment from the provision of such section. A perusal of the return filed by the High Court does not show that such exercise has been done before issuing advertisement on 02.08.2017. Therefore, the advertisement, without providing for reservation for visually challenged candidates, contravenes the provisions of Section 34 of the Act. It may be stated that Delhi High Court is providing reservation for visually challenged candidates since the year 2011 and in fact, the reservation was provided in the year 2014 as well. The learned counsel for the petitioner has asserted that even in Rajasthan, one Shri Bramhanand Sharma has been appointed as Civil Judge and Judicial Magistrate posted at Sarwar town of Ajmer District. Relying upon a newspaper report of the Times of India dated 15.04.2018, it is pointed out that the officer uses an e-speak device connected to a computer, which converts and records the notes made by the reader into speech. Thus, use of technology has made possible for a visually challenged candidate to conduct court proceedings.



10. The issue in respect of reservation to blind and partially blind in the Government posts came up for consideration before the Supreme Court in a judgment reported as AIR 1993 SC 1916 - National Federation of Blind (supra). The Court examined the report of the Standing Committee

constituted by the Ministry of Welfare, Government of India. The Committee provided to compensate 'reading deficiency' that the Readers' allowance can be provided to blind employees to enable them to engage a Reader. Similarly, to compensate for 'writing deficiency', the blind employee should be required to know typing. Adequate knowledge of typing should be prescribed as an essential qualification for blind employees for public employment. Where mobility may also be one of the main ingredients of job it is difficult to compensate to blind employees for this 'deficiency'. The Committee would also emphasise that the blind employee should be fully responsible for the duties assigned to them, despite the provision of Reader's allowance and typing skill. The Committee would also suggest that the maximum Reader's allowance should be limited to Rs.200/- p.m. To blind employees recruited to Group A and B posts. The relevant extracts from the judgment read as under:-

"2. The visually handicapped constitute a significant section of our society and as such it is necessary to encourage their participation in every walk of life. The Ministry of Welfare, Government of India has been undertaking various measures to utilise the potentialities of the visually handicapped persons. The Central as well as the State Governments have launched several schemes to educate, train and provide useful employment to the handicapped. The Central Government has provided reservations to the extent of 3% vacancies in Group C and D posts for the physically handicapped including blind and partially blind.



11. So far as the claim of visually handicapped for writing the civil services examinations, in Braille-script or with the help of Scribe, is concerned, we are of the view that their demand is legally justified.

12. The list of category A and B posts, identified as suitable for the visually handicapped by the Committee, includes number of posts

which are filled as a result of the civil services examinations. When there are posts to which blind and partially-blind can be appointed, we see no ground to deprive them of their right to compete for those posts along with other candidates belonging to general category."

11. The matter was again considered by the Supreme Court in a judgment reported as (2004) 11 SCC 1 (**Indian Banks' Association, Bombay and others vs. Devkala Consultancy Service and Others**). The Court noticed that implementation of Disability Act is far from satisfactory. The disabled are victims of discrimination in spite of beneficial provision of the Act. The relevant extract from the judgment in **Indian Banks' Association (supra)** is reproduced as under:-

"58. In *National Federation of Blind v. Union Public Service Commission* (1993) 2 SCC 411, the Court directed the Government and the UPSC to permit blind and partially blind eligible candidates to compete and write the Civil Services Examination in Braille script or with the help of a scribe. It also recommended to the Government to decide the question of providing reservations to visually handicapped persons in Group 'A' and 'B' posts in the Government and Public Sector Enterprises.

59. In *Javed Abidi v. Union of India*, (1999) 1 SCC 467, the Court directed Indian Airlines to give concessions to orthopaedically handicapped persons suffering from locomotor disability to the extent of 80% for traveling by air in India. The Court was mindful of the financial position of Indian Airlines and yet felt that this direction was in keeping with the objectives of the Disabilities Act and was in consonance with the concession already given by Indian Airlines to visually disabled persons.

60. *Kunal Singh v. Union of India*, (2003) 4 SCC 524 saw the Court interpreting the Disabilities Act in a manner so as to further its objective. The Court opined that Section 47 of the Act mandates that an employee who acquires a disability during service must be protected. If such an employee is not protected, he would not only suffer himself, but all his dependents would also undergo suffering. Therefore, merely

granting him pension would not suffice, but there must also be an attempt to secure him alternative employment.

61. Despite the progressive stance of the Court and the initiatives taken by the Government, the implementation of the Disabilities Act is far from satisfactory. The disabled are victims of discrimination in spite of the beneficial provisions of the Act."

12. In **Ravi Prakash Gupta's** case (*supra*), the challenge before the Supreme Court was to an order passed by Delhi High Court setting aside the order passed by the Central Administrative Tribunal allowing the respondents to be appointed in the civil services examination. It was argued that it was the duty of the Authorities concerned to reserve 3% of the total vacancies available and that plea of non-identification of posts prior to 2006 was only an attempt to justify the failure of the Union of India to act in terms of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short "the Act of 1995"). The relevant excerpt from the said decision reads as under:-

"27. It is only logical that, as provided in Section 32 of the aforesaid Act, posts have to be identified for reservation for the purposes of Section 33, but such identification was meant to be simultaneously undertaken with the coming into operation of the Act, to give effect to the provisions of Section 33. The legislature never intended the provisions of Section 32 of the Act to be used as a tool to deny the benefits of Section 33 to these categories of disabled persons indicated therein. Such a submission strikes at the foundation of the provisions relating to the duty cast upon the appropriate Government to make appointments in *every establishment* (emphasis added)."

13. In **Rajeev Kumar Gupta and others v. Union of India and others**, (2016) 13 SCC 153, the challenge was to two Office Memorandums issued by the Department of Personnel and Training, Government of India.

The petitioners' grievance was that the impugned memoranda deprived them of the statutory benefit of reservation under the 1995 Act with regard to Group A and Group B posts. Posts in Prasar Bharati are classified into four Groups — A to D. However, it provides for three per cent reservation in identified posts falling in Groups C and D irrespective of the mode of recruitment i.e. whether by direct recruitment or by promotion. As a consequence, the statutory benefit of three per cent reservation in favour of PWD is denied insofar as identified posts in Groups A and B are concerned, since these posts, under relevant regulations of Prasar Bharati are to be filled exclusively through direct recruitment. The Court held it is disheartening to note that admittedly low numbers of PWD, much below three per cent, are in government employment long years after the 1995 Act. Barriers to their entry must, therefore, be scrutinised by rigorous standards within the legal framework of the 1995 Act. The Court held as under:-

"21. The principle laid down in *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 is applicable only when the State seeks to give preferential treatment in the matter of employment under the State to certain classes of citizens identified to be a backward class. Article 16(4) does not disable the State from providing differential treatment (reservations) to other classes of citizens under Article 16(1) [as per *Indra Sawhney* case (supra)] if they otherwise deserve such treatment. However, for creating such preferential treatment under law, consistent with the mandate of Article 16(1), the State cannot choose any one of the factors such as caste, religion, etc. mentioned in Article 16(1) as the basis. The basis for providing reservation for PWD is physical disability and not any of the criteria forbidden under Article 16(1). Therefore, the rule of no reservation in promotions as laid down in *Indra Sawhney* (supra) has clearly and normatively no application to PWD.

22. The 1995 Act was enacted to fulfil India's obligations under the "Proclamation on the Full Participation and Equality of the People with Disabilities in the Asia and Pacific Region". The objective behind the

1995 Act is to integrate PWD into the society and to ensure their economic progress. [See para 3, 4 and 5 of the Proclamation of the Full Participation and Equality of People with Disabilities in the Asia and Pacific Region]. The intent is to turn PWD into "agents of their own destiny" [*Id. Para 2*]. PWD are not and cannot be equated with backward classes contemplated under Article 16(4). May be, certain factors are common to both backward classes and PWD such as social attitudes and historical neglect, etc.

23. It is disheartening to note that (admittedly) low numbers of PWD (much below three per cent) are in government employment long years after the 1995 Act. Barriers to their entry must, therefore, be scrutinised by rigorous standards within the legal framework of the 1995 Act.

24. A combined reading of Sections 32 and 33 of the 1995 Act explicates a fine and designed balance between requirements of administration and the imperative to provide greater opportunities to PWD. Therefore, as detailed in the first part of our analysis, the identification exercise under Section 32 is crucial. Once a post is identified, it means that a PWD is fully capable of discharging the functions associated with the identified post. Once found to be so capable, reservation under Section 33 to an extent of not less than three per cent *must* follow. Once the post is identified, it must be reserved for PWD irrespective of the mode of recruitment adopted by the State for filling up of the said post.

25. In the light of the preceding analysis, we declare the impugned memoranda as illegal and inconsistent with the 1995 Act. We further direct the Government to extend three per cent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts."

14. However, the Act has made a departure from the provisions of the Act of 1995 as the reservation for the physically disabled candidates is not dependent on any condition. In fact, the reservation can be denied only if any Government establishment is exempted from the provisions of the Act by the Chief Commissioner or the State Commissioner. It is not the stand of the High Court that the Chief Commissioner or the State Commissioner has

taken any decision not to provide reservation for visually challenged/ physically disabled candidates. Therefore, in absence of any decision to exempt the High Court from the provisions of the reservation, the High Court was bound to reserve post for the visually handicapped candidates.

15. At this stage, we may mention that a Division Bench of High Court for the State of Telangana and Andhra Pradesh in **W.P. No.31033/2016 (Arepalli Naga Babu vs. Hon'ble High Court of Judicature at Hyderabad, for the State of Andhra Pradesh and for the State of Telangana, Hyderabad)** vide order dated 14.11.2016 has allowed a visually challenged candidate to appear in the Andhra Pradesh State Judicial Services examination pending consideration of issue of reservation. The Court has also ordered that the petitioner shall be permitted to appear in the examination in a separate room and be provided the assistance of a scribe. The relevant part of the order of the Division Bench is extracted as under:-

".....The petitioner, a practicing advocate of the High Court passed his BA, LLB Honours course from National Law University of Odisha securing first division. He is visually challenged and suffers from blindness. He invoked the jurisdiction of this Court challenging the validity of Rule 7 of the Andhra Pradesh State Judicial Service Rules, 2007, on the ground that it does not provide reservation in favour of the visually challenged and is, therefore, *ultra vires* the provisions of the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act, 1995 ("the 1995 Act" for short).

Sri K. Vivek Reddy, Learned Counsel for the petitioner, would draw our attention to *Amrendra Kumar v. Registrar General, Delhi High Court* (Judgment in W.P.(c) No.1819 of 2014, dated 23.05.2014), to submit that 3% reservation for persons with disability was directed to be provided by the Division Bench of the Delhi High Court in the Delhi Judicial Service Examination, 2014; and, pursuant thereto, a notification was issued by the Delhi High Court for the Delhi Judicial

Service Examination, 2015 providing reservation in favour of the visually handicapped (blind). Learned Counsel would further submit that, against the Division Bench judgment of the Madras High Court in V.Surendra Mohan v. State of Tamil Nadu (Order in W.P.No.10582 of 2015 and M.P.Nos.1 to 3 of 2015, dated 05.06.2015) rejecting the claim for reservation in judicial service in favour of the blind, the matter was carried in appeal to the Supreme Court and, by order in S.L.P. (C)No.17223 of 2015 dated 10.07.2015, the Supreme Court, while ordering notice, had directed that one post be kept vacant. Learned Counsel would submit that the Rajasthan High Court has also issued a notification providing reservation in favour of the blind.

The question whether reservation should be provided in Judicial Services for the blind, and whether Rule 7 should be declared *ultra vires* the 1995 Act can only be examined after a counter-affidavit is filed by the respondents. There does not, however, appear to be any prohibition in the Andhra Pradesh State Judicial Service Rules, 2007, prohibiting visually challenged candidates from participating in the selection process for appointment to the posts in the A.P. State Judicial Service. While the petitioner's claim for being provided reservation necessitates further examination, he cannot be denied participation in the selection process under the open category merely on account of his handicap (blindness).

We consider it appropriate, therefore, to direct the first respondent to receive the petitioner's application, and permit him to appear for the screening test scheduled to be held on 27.11.2016 in the Hyderabad centre. In order to ensure that other candidates, who are appearing in the examination are not disturbed, the petitioner shall be permitted to appear in the examination in a separate room, and be provided the assistance of a scribe."

16. It may be stated that Government of India, Ministry of Social Justice & Empowerment, Department of Disability Affairs vide Office Memorandum F. No.16-110/2003-DD.III dated 26th February, 2013, in compliance of the order dated 23.11.2012 issued by the Chief Commissioner of Persons with Disabilities (CCPD) has issued the comprehensive

guidelines for conducting examination for the persons with disabilities. The relevant extract from the said Office Memorandum reads as under:-

"The undersigned is directed to say that Chief Commissioner of Persons with Disabilities (CCPD) in its order dated 23.11.2012 in case No. 3929/2007 (in the matter of Shri Gopal Sisodia, Indian Association of the Blind Vs. State Bank of India & Others) and in case No.65/1041/12-13 (in the matter of Score Foundation Vs. Department of Disability Affairs) had directed this Ministry to circulate guidelines for the purpose of conducting written examination for persons with disabilities for compliance by all concerned. In compliance of the above order, this Ministry hereby lays down the following uniform and comprehensive guidelines for conducting examination for the persons with disabilities as recommended by CCPD -

III. The facility of Scribe/Reader/Lab Assistant should be allowed to any person who has disability of 40% or more if so desired by the person.

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.

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.

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.

17. Thus, though the reservation of posts by the Government of India by way of the Notification dated 29th July, 2013 (*supra*) may not be *ipso facto* applicable to the posts under the State but they provide sufficient guidelines for identifying the posts meant for physically disabled candidates. The post of Judicial Magistrate has been identified as the one which can be filled by the blind and the low vision candidates. Therefore, taking a clue from the Notification published by the Central Government in respect of posts falling in Group A, we find that the decision of the High Court not to permit a facility of scribe and to reserve the post for visually handicapped candidate violates the provisions of the Act.

18. The problem is in the mind-set that a visually challenged candidate will not be able to read, write and thus, would not be able to discharge the duties as a Judicial Officer. Such visually challenged person may not be able to feel the things around him by his eyes but other senses make up for the deficiency. In fact, the disabled are not only victims of discrimination but also victims of apathy. The persons with disability do not require any sympathy but are required to be treated equal and are entitled to equal treatment warranted by Constitution.

19. In view of the above, we find that the rejection of the representation of the petitioner as contained in communication Annexure P-8 and P-9 is wholly unjustified. The same are hereby quashed.

20. We were informed that the selection in pursuance to Advertisement dated 02.08.2017 has not been finalised. The petitioner was not provided the facility of a scribe when she appeared in the preliminary examination, therefore, she could not compete with the general category candidates. Since the petitioner is the only visually challenged candidate, therefore, we direct that she should not be subjected to preliminary examination. But, the respondents will conduct a special written examination for her and that she will be provided with the facility of a scribe and also extra time in terms of the Office Memorandum dated 26th February, 2013 issued by the Government of India.

21. In exercise of the powers conferred by Section 101 of the Rights of Persons with Disabilities Act, 2016 (No.49 of 2016), the State Government has notified Madhya Pradesh Rights of Persons with Disabilities Rules, 2017 (for short "the 2017 Rules") published in M.P. Gazette (Extraordinary) dated 25.01.2018. The Rule 17 of the 2017 Rules provides for an expert committee to identify the posts for persons with disabilities while providing for 6% reservation for employment for persons with benchmark disabilities in each government establishment including in the categories of blindness and low vision. The Rule 13 of the said Rules contemplates for computation of vacancies. However, the State Government has not issued any office memorandum for facilities to the physically challenged candidates to facilitate their education and to seek public employment by providing the services of scribe and/or extra time. Therefore, in absence of any such circular, the office memorandum issued by Government of India can very well be applied for filling of the posts in the State.

22. We further direct that the written examination for the petitioner shall be conducted within one month and if she is able to qualify the written examination in terms of the relaxation provided to the candidates belonging to other physically disabled candidates, the petitioner shall be called for interview and considered for appointment in accordance with law. Resultantly, the writ petition succeeds and stands **allowed**.

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

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