



Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.27 OF 2024

Mr Somnath Joardar,
34 years of age,
Son of Swapan Joardar,
Resident of House No.518/1
Queula, Dhavli,
Ponda Goa
Email – somnath0227@gmail.com

... Petitioner

Versus

1 The Goa University
Through its Registrar,
Having office at Taleigao Plateau,
Sub Post Goa University 403206
Email – registrar@unigoa.ac.in

2 State of Goa through
Its Chief Secretary,
Secretariat, Porvorim Goa.

3 State Commissioner for Persons
with Disabilities,
Office of the State Commissioner for
Persons with Disability,
Having office at 3rd floor, Bldg 'D'
Goa Housing Board,
New Market Complex,
Porvorim Goa.
Email-dis-comm.goa@gov.in

...Respondents

Ms Annelise Fernandes, Advocate for the petitioner.

Ms A. A. Agni, Senior Advocate with Mr Junaaid Vahidulla and Ms Afrin Harihar, Advocates for respondent No.1.

Ms Sulekha Kamat, Additional Government Advocate for respondent No.2.

Ms Maria Correia, Additional Government Advocate for respondent No.3.

**CORAM: M. S. KARNIK &
NIVEDITA P. MEHTA, JJ**

DATED : 3rd MARCH 2025

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

1. By this petition under Article 226 of the Constitution of India the petitioner prays for a direction to respondent No.1-Goa University to consider his case for appointment to the post of Multi-Tasking Staff-2022 ('MTS' for short) under the category of Persons with Disability ('PwD' for short) in light with the aims and objects of the Right of Persons with Disability Act, 2016 ('the Act of 2016' for short) by setting a criteria which would be in line with the equal opportunity policy as contemplated under the provisions of the Act of 2016.

2. The facts of the case in brief are as under:

The petitioner is a person with disability in terms of Section 18 of Rights of Persons with Disability Rule, 2017 (hereafter the

Rules of 2017) and to that effect a certificate dated 10.03.2022 was issued by the Department of Neurology certifying that the petitioner is having symptomatic epilepsy. His total disability as per Section 18 of the Rules of 2017 is 40% (cognitive + slowness in activities of daily living). His total disability calculated as per standard combining formula is 40% (Forty Percent) permanent (Physical impairment/visual impairment/speech and hearing impairment) in relation to his above sickness.

3. The Goa University invited applications for the various posts on 13.10.2022. The University notified one MTS post under the Person with Disability (PwD category). On 15.10.2022, the petitioner applied for the post of MTS under the PwD category. The petitioner's seat number as per admit card was 0656. The University declared the general merit list for the recruitment of MTS in July 2023. The petitioner's name was shown at serial No.0656, the remark against his name indicated as "fail".

4. Learned counsel Ms Annelise Fernandes for the petitioner submitted that the University should have considered the petitioner's case separately as PwD category. It is submitted that just because in the application form the category of the petitioner is mentioned as unreserved, the petitioner is considered as a general

category candidate. It is submitted that in the application form the petitioner has specifically mentioned that the petitioner is suffering from disability. It is submitted that having regard to the provisions of the Act of 2016, the action on the part of the University in making a common list of unreserved category and including the petitioner's name in the said list is arbitrary. It is further submitted that the petitioner was deprived of the benefits of the provisions of the Act of 2016 as a result of considering the petitioner as an unreserved candidate. It is further submitted that the right of equal opportunity is denied to the petitioner though he was suffering from a disability. It is further submitted that the petitioner was not provided with the facility of a scribe. It is further submitted that it was incumbent on the part of the respondent to have informed the petitioner of his right to a scribe having regard to the disability he was suffering.

5. Ms Agni, learned Senior Advocate on the other hand invited our attention to the affidavit in reply and submitted that no case is made out by the petitioner for interference in the general merit list of the screening test held on 12.03.2023.

6. Heard learned counsel for the parties. We have perused the memo of the petition, documents annexed and the pleadings on record.

7. Admittedly, the petitioner is suffering a total disability of 40%. The general merit list of the screening test held on 12.03.2023 for recruitment of MTS was published by the University wherein the petitioner's name was shown at serial No.656. The petitioner no doubt was shown in the unreserved category. The remark in the result column indicates that the petitioner failed in the written test.

8. It is pertinent to note that the University had prepared a separate list of PwD candidates for the post of MTS. The petitioner applied in the PwD category along with all other candidates who are shown in the list of PwD candidates for the post of MTS. In the said list, the petitioner's name was shown at serial No.11 and in the remark column against his name is shown as fail. Based on the marks obtained, a separate list of all candidates who applied for the post of MTS was made. The candidate belonging to the PwD category, Mr Salkar Saish Ulhas with highest marks whose seat number is 1507 in the general list was selected for the post of MTS. Even Mr Salkar Saish Ulhas was shown as an unreserved candidate

in the general list just like the petitioner. From the general list, PwD candidates were categorised separately and a separate list of PwD candidates was made for consideration against the vacancy meant for PwD category.

9. The record reveals that the petitioner was considered as a PwD candidate. The petitioner failed in the examination. There is a separate list of PwD candidates for the post of MTS. We therefore do not find any merit in the submissions of learned counsel for the petitioner as the candidature of one who was having the highest marks amongst the PwD category candidate was considered for the post of MTS.

10. The next point urged by Ms Fernandes is as regards not providing the facility of a scribe for writing the examination. It is submitted that a valuable right of being informed by the University has been denied which resulted in the petitioner failing in the examination. It is submitted that the petitioner is suffering from disability which entitles him to the facility of a scribe.

11. In response, our attention is invited by Ms Agni, learned Senior Advocate to the Office Memorandum dated 10.08.2022 issued by the Ministry of Social Justice and Empowerment,

Department of Empowerment of Persons with Disabilities, Government of India. As per the said OM, the facility of scribe and/or compensatory time shall be granted solely to those having difficulty in writing subject to production of a certificate to the effect that person concerned has limitation to write and that scribe is essential to write examination on his/her behalf from the competent medical authority of a Government healthcare institution as per proforma at Appendix-I of the OM. The medical authority for the purpose of certification has to be a multi-member authority comprising of experts in the field of medicine as mentioned in the said OM.

12. The petitioner has himself written in the examination. There was no request made by the petitioner that he should be provided with a scribe. This contention is not even taken in the petition and foundational facts in support of this contention are not pleaded.

13. Nonetheless we have given our anxious consideration to the submissions of learned counsel for the petitioner on this aspect as well. It is not the case of the petitioner that he is unable to write. In fact he has written the paper. There is nothing to demonstrate that the disability he suffers came in the way of his answering the written examination.

14. Learned counsel submitted that having regard to the disability suffered by the petitioner, it is the University which should have itself offered him the facility of a scribe and/or at least informed the petitioner of his right to the facility of a scribe.

15. Learned Ms Agni Senior Counsel submitted that all those who made a request for a scribe along with necessary certification, were extended the facility. No such request was made by the petitioner. The petitioner has even today not produced any certificate to demonstrate that he is not in a position to write or that such disability is a barrier in his way in writing at the examination. We are therefore not impressed with this submission of learned counsel for the petitioner.

16. The decision of the Hon'ble Supreme Court in *Vikash Kumar Vs Union Public Service Commission and others in Civil Appeal No.273 of 2021 decided on 11.02.2021* is distinguishable on facts. In that case, the petitioner was suffering from a writer's cramp and on his being denied a scribe in the civil services examination, he approached the Hon'ble Supreme Court for having failed to get redressal from any of the forums.

17. The decision in *Avni Prakash Vs National Testing Agency and others in Civil Appeal No.7000 of 2021 decided on 23.11.2021* will be of no assistance to the case of the petitioner as the facts disclosed that what was requested by the petitioner therein was that given her PwD status, she was entitled to claim a relaxation in terms of an additional hour of compensatory time as against the total time of three hours prescribed for regular candidates. Towards the end of the scheduled duration of three hours, her answer sheet was forcibly collected together with the category of regular students appearing for the examination, depriving her of compensatory time. It is on those facts that the matter was heard before the Hon'ble Supreme Court. The decisions in *Vikash Kumar* (supra) and *Avni Prakash* (supra) are thus distinguishable on facts.

18. We therefore, do not find any merit in the petition and accordingly, the petition is dismissed with no order as to costs.

19. Misc. Civil Application No.366 of 2025 (F) does not survive with the disposal of the petition and the same is disposed of accordingly.

NIVEDITA P. MEHTA, J

M. S. KARNIK, J