

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
WEDNESDAY, THE 10TH DAY OF AUGUST 2022 / 19TH SRAVANA, 1944
WP(C) NO. 19808 OF 2021

PETITIONER:

K.J. VARGHESE
S/O. K.L. JOSEPH, PRESIDENT - KERALA FEDERATION OF
THE BLIND, VACHIYOOR P.O, THIRUVANANTHAPURAM,
PIN - 695635.

BY ADVS.
P.K.NANDINI
A.P.JAYARAJ (ANJILIKKAL)
JUBYRAJ.A.P
JISHAMOL CLEETUS

RESPONDENTS:

- 1 THE STATE OF KERALA
REPRESENTED BY SECRETARY TO GENERAL EDUCATION,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001.
- 2 DIRECTOR OF GENERAL EDUCATION
JAGATHY, THIRUVANANTHAPURAM, PIN - 695014.
- 3 THE STATE OF KERALA,
REPRESENTED BY SECRETARY SOCIAL JUSTICE DEPT.
SECRETARIAT, THIRUVANANTHAPURAM - 695601.
- 4 ADDL R4 TO R60 IMPLEADED

P.S.SASIKUMAR,
MANAGER, AIDED UP SCHOOL, VADAKKEPOTTA, PALAKKAD
DISTRICT-678687.
- 5 RAVEENDRAN.M.K.
S/O. APPU MAOR K.P., MANAGER, AUPS CHEEKKILODE,
CHEEKKILOE P.O., ATHOLI VIA, BALUSSERY SUB DISTRICT
(AEO), KOZHIKODE DISTRICT-673315.

W.P.(C) No.19808/2021 & connected cases :2:

- 6 P.P.KRISHNARABHA,
D/O. KRISHNAN P.V., MANAGER, PATHIRIPPATTA UP
SCHOOL, PATHIRIPPATTA, KAKKATTIL, KOZHIKODE-673507,
KUNNUMMAL SUB DISTRICT (AEO), KOZHIKODE DISTRICT.
- 7 SHAMEENA P.,
D/O. NARAYANAN P., MANAGER, PUNNUR CHERUPALAM AUP
SCHOOL, P.C. PALAM P.O., KOZHIKODE-673507.
- 8 SOUMEENDRAN T.K.,
S/O. KELAPPAN, MANAGER, GNANAPRADAYANI ALP SCHOOL,
NANMINDAL P.O., KOZHIKODE-673613.
- 9 P.V.PRABHAKARAN NAIR,
S/O. GOVINDAN KUTTY KIDAV, MANAGER, NANMINDA,
EZHUKULAM AUP SCHOOL, NANMINDA P.O.,
KOZHIKODE-673613.
- 10 P.RAVEENDRAN,
S/O. KUNHIKANNAN, MANAGER, CHEEKKONNU EAST MLP
SCHOOL, PATHRIPPATTA, KAKKATTIL, KOZHIKODE-673507.
- 11 P.SADASIVAN,
S/O. T.K. KUNHIRAMAN NAIR, MANAGER, VATTOLI LP
SCHOOL, VATTOLI, KAKKATTIL, KUNNUMMAL-673507.
- 12 P.P.ARU, A,
D/O. NANU K., MANAGER, NIDUMANNUR LP SCHOOL,
BUDYNABBYR P.O., KAKKATTIL, KOZHIKODE-673507.
- 13 KALLIANI C.,
D/O. KOMAPAN, MANAGER, CHEEKKONNU UP SCHOOL,
KAIVELI, CHEEKKONNU P.O., KAKKATTIL,
KOZHIKODE-673507.
- 14 V.K.SAROJINI AMMA,
D/O. RYRY KURUP, MANAGER, CHERAPURAM UP SCHOOL,
CHERAPURAM P.O., KAKKATTIL, KOZHIKODE-673507.

- 15 V.KUNHIKELU NAMBIAR,
S/O. CHATHU NAMBIAN, MANAGER, VATAYAM SOUTH LP
SCHOOL, VATAYAM P.O., KAKKATTIL VIA,
KOZHIKODE-673507.
- 16 K.K.KALYANIKUTTY,
D/O. UNNI VAIDHYAR, MANAGER, VATAYAM SOUTH LP
SCHOOL, VATAYAM P.O., KAKKATTIL VIA,
KOZHIKODE-673507.
- 17 AYISHA BEEVI P.,
W/O. ABDUL KADER, MANAGER, AMLPS, PERUNTHODIPADAM,
PULLMKUNNU P.O., MALAPPURAM-673634.
- 18 SAIDALAVI M.M.,
S/O. MUHAMMED KUTTY, MANAGER, KAILAMADAM AMLP
SCHOOL, PANTHEERANKAVU P.O., KOZHIKODE-673019.
- 19 DAVOOD KHAN M.,
S/O. MEERAN, MANAGER, T.M. MADRASSA ALP SCHOOL,
KOLATHARA P.O., KOZHIKODE-673655.
- 20 RAMAMANI K.O.,
C/O. KUTTYAPPA, MANAGER, KEEZHATHUR UP SCHOOL,
PATHIRIYAD P.O., PINARAYI VIA, THALASSERY NORTH,
KANNUR DISTRICT-670741.
- 21 DEVI AMMA E.,
D/O. KUNHIKRISHNAN NAIR, MANAGER, MANATHANA
PERAVOOR UP SCHOOL, PERAVOOR P.O., IRITTY VIA,
KANNUR DISTRICT-670673.
- 22 T.V.THANKAMANI,
D/O. P.M. NARAYANAN NAMBIAR, MANAGER, UTTANNUR UP
SCHOOL, KOLOLAM, EDAYANNUR P.O., KANNUR-670595.
- 23 PRIYA C.P.,
D/O. KRISHNAN P.V., MANAGER, THAVATH DEVI VILASAM
LP SCHOOL, THAVAM P.O., KANNUR DISTRICT-670301,
MADAYI VIA.

W.P.(C) No.19808/2021 & connected cases :4:

- 24 SIDDIQ P.,
S/O. ABDURAHIMAN, MANAGER, TALUPARAMBA YATHEEM
KHANA LOWER PRIMARY SCHOOL, TALIPARAMBA NORTH,
KANNUR-670141.
- 25 KUNHIKANNAN NAMBIAR P.V.,
S/O. CHINDAN NAMBIAR P., MANAGER, KOONA, ALP
SCHOOL, KOONAM PANNIYOOR P.O., KANNUR-670142.
- 26 A.K.DINESH KUMAR,
S/O. A.V.KUNHAPPA, MANAGER, DESAMITRAM UP SCHOOL,
CHEDICHERY, PERUVALATHUPARAMBA, IRIKKUR,
KANNUR-670593.
- 27 V.K.VASUDEVAN NAMBOODIRI,
S/O. NARAYANAN NAMBOODIRI, MANAGER, POOMANGALAM AUP
SCHOOL, PANNIYOOR P.O., KANNUR-670142.
- 28 A.K.USHA,
D/O. K.O.PADMANABHAN, MANAGER, PERINTHELERI AUP
SCHOOL, KOYYAM P.O., KANNUR-670142.
- 29 P.C.MADHAVI KUTTY,
D/O. KELU NAIR, MANAGER, R.C. AMALA BASIC UP
SCHOOL, PINARAYI, KANNUR-670741.
- 30 VASANTHI T.V.,
D/O. OTHENAPANIKKAR T.V., MANAGER, PARIYARAM UP
SCHOOL, PARIYARAM, KOLARI P.O., KANNUR-670050.
- 31 C.M.SHIBU,
S/O. C.K. MATHAYI, MANAGER, VEKKALAM AIDED UP
SCHOOL, PERUMTHODI, NEDUMPOYIL P.O., IRITTY,
KANNUR-670650.
- 32 K.E.MEENAKSHI AMMA,
D/O. C.K. RAMAN NABIAR, MANAGER, MAMBA EAST LP
SCHOOL, ANJARAKANDY, MAMBA P.O., KANNUR-670611.

W.P.(C) No.19808/2021 & connected cases :5:

- 33 K.ASHOK KUMAR,
S/O. CHATHUKUTTY NAMBIAR, MANAGER, SREE RAMA
VILASAM ALP SCHOOL, KERAL PERAVPPR P.O., MATTANNUR,
KANNUR-670702.
- 34 M.RAMACHANDRAN,
S/O. KUNHAPPA NAMBIAR, MANAGER, VANIVILASAM AIDED
LP SCHOOL, THILLANKERI, ULIYIL P.O., KANNUR.
- 35 MOHANAN R.K.,
S/O. MNHAMBU NAMBIAR, MANAGER, KANAD LP SCHOOL,
KANAD P.O., EDAYANNUR, KANNUR-670595.
- 36 P.MANIRAJ,
S/O. ANANDAKURUP, MANAGER, KEECHERY LP SCHOOL,
KEECHERY P.O., MTTANNUR, KANNUR-670702.
- 37 P.M.NALINI,
D/O. C.H. OTHENAN NAMBIAR, MANAGER, PORORA UP
SCHOOL, PORORA P.O., KANNUR-670702.
- 38 K.BABY SYLAJA,
D/O. N.P. RAGHAVAN, MANAGER, THOLAMBRA UP SCHOOL,
THOLAMBRA P.O., KANNUR-670673.
- 39 CHANDRASEKHARAN P.,
S/O. NARAYANAN P., MANAGER, NIDUVALOOR AUP SCHOOL,
NIDUVALOOR, CHUZHALI P.O., KANNUR-670142.
- 40 K.K.ABDURAHIMAN HAJI,
S/O. PACKER MUSLIYAR, MANAGER, NISLP SCHOOL,
PALOTTUPALLY, MATTANNUR P.O., KANNUR-670702.
- 41 A.MUHAMMED KUNHI,
S/O. SOOPYKUTTY, MANAGER, SREEKANDAPURAM MOPLA ALP
SCHOOL, IRIKKUR, KANNUR-670631.
- 42 K.ABDULLA,
S/O. EBRAHIM, MANAGER, IRSHADUL ISLAM MADRASSA ALP
SCHOOL, IRITTI P.O., KANNUR-670703.

W.P.(C) No.19808/2021 & connected cases :6:

- 43 P.K.SHAMSUDHEEN,
S/O. T.C. EBRAHIM MANAGER, KAMALIYA MADRASSA AUP
SCHOOL, IRIKKUR P.O., KANNUR-670593.
- 44 K.K.KADEESSA,
D/O. M.N. MAKKI, MANAGER, MERUVAMBAYI MOPLA UP
SCHOOL, NEERVELI P.O., KANNUR-670701.
- 45 K.T.DEVIDAS,
S/O. KUNHIKKAMMARAN, MANAGER, KALLAIAD AUP SCHOOL,
KALLIAD P.O., KANNUR-670503.
- 46 N.K.MEENAKSHI,
W/O. K.P. VIJAYAN, MANAGER, RAMAR GURU MEMORIAL AUP
SCHOOL, MALAPPATTAM P.O., KANNUR-670631.
- 47 P.P.SREEDHARAN,
S/O. KRISHNAN, MANAGER, CHEDICHERY ALP SCHOOL,
PERUVALATHUPARAMBA P.O., KANNUR-670593.
- 48 K.K.JAYARAJA MENON,
MANAGER, SVV HIGHER SECONDARY SCHOOL,
IRUTHENPATHY-678555.
- 49 R.UMADEVI,
MANAGER, VM UP SCHOOL, KALLEKKAD, PALAKKAD
DISTRICT-678006.
- 50 K.MADHAVAN,
MANAGER, KEM AIDED LP SCHOOL, KAZHANI,
PALAKKAD-678543.
- 51 K.K.PEETHAMBARAN,
MANAGER, NARAYANA UP SCHOOL, MANAPPADAM,
PALAKKAD-678687.
- 52 MURALI MOHAN,
MANAGER, HIGHER SECONDARY SCHOOL, THIRUVALAYANNUR,
THRISSUR-THIRUVALAYANNUR-680001.

W.P.(C) No.19808/2021 & connected cases :7:

53 K.O.RAPPAI,
MANAGER, C.A. HIGHER SECONDARY SCHOOL, COYALMANNAM,
PALAKKAD DISTRICT-678702.

54 GEORGE VARGHESE,
MANAGER, EBENEZER HIGHER SECONDARY SCHOOL,
ETTICHUVADU, RANNI-689676.

55 K.A.SEETHARAMAN,
MANAGER, SEETHARAM UP SCHOOL, KUNISSERY, ALATHUR,
PALAKKAD-678681.

56 M.K.ASHOK KUMAR,
MANAGER, KA UP SCHOOL, MELARCADE-678703.

57 THOMAS MATHEW,
MANAGER, M.T. UP SCHOOL, VADAKKANCHERRY, PALAKKAD
DISTRICT-680582.

58 P.H.ABDUL KADER,
MANAGER, AMLP SCHOOL, PUNNAPPADAM, ELAVAMPADAM,
PALAKKAD-678609.

59 N.P.SUNIL,
MANAGER, B.M. AIDED JUNIOR BASIC SCHOOL,
KUZHALMANNAM-678702.

60 S.UMMAR FAROOQ,
MANAGER, NM UP SCHOOL, AKKARA, KAASSERY P.O.,
PIN-678543.
(ADDITIONAL R4 TO R60 ARE IMPEADED AS PER ORDER
DATED 13/12/2021 IN IA 1/2021 IN WPC 19808/2021)

ADDL 61 TO 81 IMPEADED

61 V.G.SATHEESH,
S/O. GOPALAKRISHNAN, MANAGER, ALP SCHOOL,
KARATTUKURSSI, OTTAPALAM, PALAKKAD-679101.

- 62 SIVASANAKRAN,
S/O.RAMATHARAKAN, MANAGER, ALP SCHOOL, MANGODE,
CHERPLASSERY, PALAKKAD-679503.
- 63 C. NARAYANAN KUTTY,
S/O. P.C. NARAYANAN NAIR, MANAGER, AMLP SCHOOL,
KAMBURAM, PERUNTHALMANNA, MALAPPURAM
DISTRICT-679357.
- 64 RAGHU K.P.,
S/O. K.P. KUNHAN, MANAGER, AMLP SCHOOL,
CHERPLASSERY, PALAKKAD-679503.
- 65 V.M. ABOOBACKER,
S/O. MOHAMMED, MANAGER, AMUP SCHOOL,
MUNDAKKOTTUKKURISSY, SHORNUR, PALAKKAD-679122.
- 66 C. GOPINATHAN,
S/O. RAMA KRISHNA GUPTAN, MANAGER, AUP SCHOOL,
AZHIYANNUR, CHERPULASSERY, PALAKKAD-678633.
- 67 K.P. GOPALAKRISHNAN,
S/O. K.P. K. EZHUTHACHAN, MANAGER, ADLP SCHOOL,
CHERPLASSERY, PALAKKAD-679503.
- 68 P.K. BHARATHI,
MANAGER, PANAMANNA UP SCHOOL, OTTAPPALAM, P.O.
AMBALAVATTAM, PIN-679522.
- 69 V. VENUGOPALAN,
S/O. RAVUNNI NAIR (LATE) MANAGER, THEKKUMANGALAM JB
SCHOOL, LAKKIDI, PALAKKAD-679301.
- 70 C.SUBRAMANIAN,
S/O. RAMANKUTTY GUPTHAN, MANAGER, AUP SCHOOL,
SREEKRISHNAPURAM, PALAKKAD-679514.
- 71 ABHIJITH C.S.,
S/O. C.S. SUBRAMANIAN, MANAGER, SRJA LP SCHOOL,
ESWARAMANGALAM, PALAKKAD-679573.

- 72 VIJAYASANKAR V.,
S/O. V. NARAYANAN EZHUTHACHAN, MANAGER, SOUTH ALP
SCHOOL, CHERPLASSERY, PALAKKAD-679503.
- 73 MADALA MUHAMMED ALI,
S/O. HAMZA, MANAGER, ALP SCHOOL, THEKKUMMURI,
PALAKKAD-679506.
- 74 ORASAD K.,
S/O. APPU EZHUTHACHAN, MANAGER, AUP SCHOOL,
PALAKKODE, KOTHAKURUSSI, OTTAPPALAM,
PALAKKAD-679501.
- 75 P. MOIDUKUTTY HAJI,
S/O. KUNHITHURRY, MANAGER, ELEDATH MADAMBA ALP
SCHOOL, OTTAPPALAM, PALAKKAD-679502.
- 76 P.N. HARISANKARAN,
S/O. P. NARAYANAN EZHUTHACHAN (LATE), PARASSERI
HOUSE, P.O. THEKKUMMURI, MANAGER, BVA LP SCHOOL,
KARALMANNA, CHERPLASSERY, MANNARKKAD-679506.
- 77 M. SULOCHANA,
W/O. K.P. SWAMINATHAN, MANAGER, SVA LP SCHOOL,
KULIKKILYAD, CHERPLASSERY, MANNARKKAD-KUTHIPPADATH
HOUSE, KALAPPADAM, P.O. KUMARAMPUTHUR-678583.
- 78 V. DURGAVATHI,
D/O. T.V. SOOLAPANI VARIER, MANAGER, AMLP SCHOOL,
JAYASREE, ATTASSERY P.O., ATTASSERY, CHERPLASSERY,
PALAKKAD-678513.
- 79 GINESH P.B.,
S/O. BALARAJAN, MANAGER, NNNM UP SCHOOL,
KARALMANNA, PALAKKAD-679506.
- 80 MADHAVKUTTY,
MANAGER, AUP SCHOOL, ARUMANAM KURISSI,
CHERUPPLASSERY, PALAKKAD-679504.

W.P.(C) No.19808/2021 & connected cases :10:

81 JAYASRI P.,
ALP SCHOOL POTHU, CHERPLASSERY, PALAKKAD-679503.

ADDITIONAL R61 TO R81 ARE IMPEADED AS PER ORDER
DATED 13/12/2021 IN IA 2/2021.)

82 ADDL 82 TO 87 IMPEADED

V.M.MURALEEDHARAN
MANAGER, VELLAMUNDA A.U.P SCHOOL, P.O KATTAYAD,
VELLAMUNDA, WAYANAD, PIN-670 731

83 V.V.JINARJAN
MANAGER, AUP SCHOOL, VARADOOR, VARADOOR, WAYANAD,
PIN: 673 591

84 P.T.GEETHA
MANAGER, VANHODE AUP SCHOOL, VANHODE P.O,
MANANTHAWADY, WAYANAD DIST., PIN: 670 731

85 KUNHIRAMAN
MANAGER, CHEERAL AUP SCHOOL, CHEERAL, SULTHAN
BATHERY, WAYANAD, PIN: 673 595

86 K.P.DEVAKI AMMA
MANAGER, KUNHOME, AUP SCHOOL, MATTILAYAM P.O,
WAYANAD, PIN: 670731

87 C.K.ANANDARAM
MANAGER, ANMUP SCHOOL EDAVAKA, ELLUMANNAM P.O,
WAYANAD, PIN: 670 645.

ADDL. R82 TO R87 ARE IMPEADED AS PER ORDER DATED
11/3/2022 IN IA 1/2022 IN WP(C) 19808/2021

ADDL R88 AND R89 IMPEADED

88 KERALA PRIVATE SCHOOLS MANAGER'S ASSOCIATION,
STATE COMMITTEE, THIRUVANANTHAPURAM-695 001,

W.P.(C) No.19808/2021 & connected cases :11:

REPRESENTED BY ITS GENERAL SECRETARY, MONY.K,
RESIDING AT KAVADIYIL VILLA, CHERIYAVELINALLOOR
P.O, OYUR(VIA), KOLLAM DISTRICT-691 510

89 MANAGER,
KPM HIGHER SECONDARY SCHOOL, OYOOR, KOLLAM
DISTRICT- 691 510.

ADDL. R88 AND R89 ARE IMPEADED AS PER ORDER DATED
11/3/2022 IN IA 2/2022 IN WP(C) 19808/2021

ADDL R90 TO 97 IMPEADED

90 ADDL.R90.USHA DEVI
MANAGER, ERAVANNUR AUP SCHOOL, ERAVANNUR P.O,
KOZHIKODE- 673 585

91 ADDL.R91.

SOORAJ.M
MANAGER, AUP SCHOOL, MANIPURAM, MANIPURAM P.O,
KOZHIKODE- 673 572

92 ADDL.R92.RUGMINI.P.K
MANAGER, PERUMANNA ALP SCHOOL, PERUMANNA P.O,
KOZHIKODE- 673 019

93 ADDL.R93.KARUNAKARAKURUP
MANAGER, VILIAPPALLY UP SCHOOL, VILIAPPALLY,
VATAKARA TALUK, KOZHIKODE- 673 542

94 ADDL.R94.GOPALAKRISHNAN.C
MANAGER, VAIKKILASSERY UP SCHOOL, VAIKKILASSERY
P.O, VADAKARA, KOZHIKODE- 673 104

95 ADDL.95.DEEPESH.M
MANAGER, VENGERI U P SCHOOL, VENGERI P.O,
KOZHIKODE- 673 572

- 96 ADDL.96.AJIN.M.SASI
MANAGER, NALLUR EAST AUP SCHOOL, PERUMUGHAM P.O,
FEROKE, KOZHIKODE- 673 631
- 97 ADDL.97.SUSHEELA.M.V
SVAUP SCHOOL, CHELEMBRA, PUTHIYARA P.O, KOZHIKODE-
673 004.
- ADDL.R90 TO R97 ARE IMPEADED AS PER ORDER DATED
20/05/2022 IN IA 4/22 IN WP(C) 19808/2021.
- 98 ADDL. R98 TO R102 ARE IMPEADED
- ADDL. K.P.SIVANANDAN
MANAGER, KUNNAMANGALAM AMLP SCHOOL, KUNNAMANGALAM,
KOZHIKODE-673 571
- 99 P. NARAYANAN
MANAGER, NARIKUNNU U P SCHOOL, EDACHERI P.O,
EDACHERI, KOZHIKODE- 673 502
- 100 T.HARIDASAN
MANAGER, MALAYAMMA A.U.P SCHOOL, MALAYAMMA P.O,
KOZHIKODE PIN: 673 601
- 101 S.SABIRA
MANAGER, KEEZHAL U P SCHOOL, KEEZHAL P.O,
KOZHIKODE, PIN- 673 104
- 102 T.K.SURESH
MANAGER, KAYALAM A.L.P SCHOOL, PERUVAYAL P.O,
KOZHIKODE: 673 024.
- ADDL. R98 TO R102 ARE IMPEADED AS PER ORDER DATED
30/05/2022 IN IA 5/2022 IN WP(C) 19808/2021
- 103 ADDL.R103
HELNA V.R.
AGED 24 YEARS
W/O NIDHEESH.K.ELIAS PRESENTLY WORKING AS JUNIOR

LANGUAGE TEACHER(HINDI) AT AUPS MANNANNUR P.O,
OTTAPALAM, PALAKKAD AND RESIDING AT KUNNATHUSSERY
PUTHENPURAYIL HOUSE, PULAKODE.P.O,
CHELAKKARA-680506.

ADDL. R 103 IS IMPEADED AS PER ORDER DATED
07-06-2022 IN IA 6/2022 IN WP(C) 19808/2021

104 ADDL R104

SREEJITH C., AGED 35 YEARS, S/O LATE CHANDRAN, HSST
JUNIOR(COMMERCE), MVHSS, ARUMANOOR, POOVAR P.O,
THIRUVANANTHAPURAM-6905525 RESIDING AT ROHINI,
BEACH ROAD, KOVALAM, THIRUVANANTHAPURAM
DISTRICT-695527

ADDL. R 104 IS IMPEADED AS PER ORDER IN IA 7/2022
DATED 10.08.2022 IN WP(C) 19808/2021

ADDL 105 TO 109 IMPEADED

105 NOBLE MATHEW

AGED 40 YEARS, S/O MATHEW, HST(SOCIAL SCIENCE),
ST.SEBASTIAN'S HSS, KADANAD, KOTTAYAM DISTRICT,
RESIDING AT POLACHIRAKUNNUMPURAM, MEMURY P.O,
MANVETOM, KOTTAYAM DISTRICT, PIN - 686 611

106 JAINS C. KURIAN, HST(SOCIAL SCIENCE) ST.SEBASTIAN'S
HSS, KADANAD, KOTTAYAM DISTRICT, RESIDING AT
VALLOCHERIL HOUSE, PALOORKAVU P.O, IDUKKI DISTRICT,
PIN - 685 532

107 ANJU THOMAS, UPST, ST.SEBASTIAN'S HSS, KADANAD,
KOTTAYAM DISTRICT, RESIDING AT ANJILITHOTTIYIL
HOUSE, MUTTOM P.O, IDUKKI DISTRICT, PIN - 685 587

108 MANJU JOSEPH, HST(MALAYALAM), ST.MARY'S GHSS, PALA,
KOTTAYAM DISTRICT, RESIDING AT THEKKUMKATTIL HOUSE,
KURUMANNU P.O, PALA, KOTTAYAM DISTRICT, PIN- 686651

W.P.(C) No.19808/2021 & connected cases :14:

109 GLANIS BABY, UPST, ST.MARY'S HS, POTHANICAD,
KOTHAMANGALAM, ERNAKULAM DISTRICT, RESIDING AT
NADUKKATTIL HOUSE, MEKKADAMPU P.O, KADATHY,
ERNAKULAM DISTRICT, PIN-682316
ADDL. R 105 TO 109 IS IMPLEADED AS PER ORDER IN IA
8/2022 DATED 10.08.2022 IN WP(C) 19808/2021

BY ADVS.
GOVERNMENT PLEADER
ADVOCATE GENERAL OFFICE KERALA
GEORGE ABRAHAM
JIJI THOMAS
K.MOHANAKANNAN
SHAMEENA SALAHUDHEEN
T.R.JAGADEESH
SIJI ANTONY
H.PRAVEEN (KOTTARAKARA)
SMITHA MATHEW
P.S.SAJEEV
P.M.JOSEPH
MANOJ GEORGE
SHRI.T.B.HOOD, SPL.G.P. TO A.G.()

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10.08.2022, ALONG WITH WP(C).17632/2021 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) No.19808/2021 & connected cases :15:

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
WEDNESDAY, THE 10TH DAY OF AUGUST 2022 / 19TH SRAVANA, 1944

WP(C) NO. 17632 OF 2021

PETITIONER:

JASEELA P.
AGED 40 YEARS
W/O. ALI K, KAREKKADAN HOUSE, THAMPANANGADI,
VALLUVANANGAD SOUTH P.O, PANDIKKAD, MALAPPURAM
DISTRICT-676 521.

BY ADV JAYASREE K.P.

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY, GENERAL EDUCATION
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 2 DIRECTOR OF PUBLIC INSTRUCTIONS
JAGATHY, THIRUVANANTHAPURAM, PIN- 695 014
- 3 DISTRICT EDUCATIONAL OFFICER
DISTRICT EDUCATION OFFICE, UPHILL, MALAPPURAM,
PIN 676 505
- 4 ASSISTANT EDUCATIONAL OFFICER,
MANJERI, UPHILL, MALAPPURAM, PIN- 676 505
- 5 ASSISTANT EDUCATIONAL OFFICER,
WANDOOR, MALAPPURAM, PIN- 679 328

W.P.(C) No.19808/2021 & connected cases :16:

6 THE MANAGER
R.M HIGH SCHOOL, MELATTOOR, MALAPPURAM DISTRICT,
PIN - 679 328

*ADDL RESPONDENTS 7 TO 10 IMPEADED

7 MANAGER
E.M.E.A.H.S.S (UNDER SEETHI HAJI MEMORIAL TRUST,
KONDOTTY), MALAPPURAM DISTRICT, PIN-673638

8 THE MANAGER
M.S.P HIGH SCHOOL, MALAPPURAM-676505

9 THE MANAGER
I.O.H.S.S, EDAVANNA, MALAPPURAM DISTRICT,
PIN-676541

10 THE DISTRICT EDUCATIONAL OFFICER
WANDOOD, MALAPPURAM DISTRICT, PIN-679328

BY ADVS.
ADVOCATE GENERAL OFFICE KERALA
T.B.HOOD(K/000253/1998), GP TO ADDL AG

AUGUSTINE JOSEPH
MUHAMMED SHAFI M
V.A.MUHAMMED
K.S.ROCKEY
TONY AUGUSTINE
GEORGE RENOY
M.SAJJAD
T.RASINI(K/000090/2017)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10.08.2022, ALONG WITH WP(C).11673/2022, 19808/2021, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) No.19808/2021 & connected cases :17:

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
WEDNESDAY, THE 10TH DAY OF AUGUST 2022 / 19TH SRAVANA, 1944
WP(C) NO. 11673 OF 2022**

PETITIONERS:

- 1 MUHAMMAD SUFIYAN .V
S/O HAMZA, VADAKKANGARA HOUSE, PAYYANAD P.O.,
MALAPPURAM-676 122.
- 2 AMEER JINNA,
S/O MUHAMMED ALI JINNA, PALLATHUPARAMBIL HOUSE,
THODUPUZHA EAST P.O., IDUKKI-685 585
- 3 SARATH U.S,
S/O UNNIKRISHNAN NAIR, SHIRDHI, MOONNUKALLINMOODU,
NEYATTINKARA P.O. THIRUVANANTHAPURAM-695 121
- 4 SOORAJ M.S,
S/O MANIKANDAN, THOLERI HOUSE, AROOR P.O., KAKKATTIL
VIA, CALICUT-673 507
- 5 MAHIN C ASAD,
S/O ASAD, CHITTAYAM HOUSE, MARKET P.O.,
MOOVATTUPUZHA, VELLORKUNNAM-686 673

BY ADVS.
P.K.NANDINI
A.P.JAYARAJ (ANJILIKKAL)
JUBYRAJ.A.P
SMT.JISHAMOL CLEETUS, CGC

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT,

W.P.(C) No.19808/2021 & connected cases :18:

THIRUVANANTHAPURAM-PIN-695 001

2 SECRETARY TO GENERAL EDUCATION,
SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001

3 DIRECTOR OF GENERAL EDUCATION,
JAGATHY, THIRUVANANTHAPURAM, PIN-695 014.

4 SECRETARY SOCIAL JUSTICE DEPT,
SECRETARIAT, THIRUVANANTHAPURAM-695 601.

BY ADVS.

ADVOCATE GENERAL OFFICE KERALA
SHRI.T.B.HOOD, SPL.G.P. TO A.G.()

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10.08.2022, ALONG WITH WP(C).19808/2021 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“CR”

J U D G M E N T

The petitioners in W.P.(C) No.11673/2022 are five young men. They contend that they have acquired all the requisite qualifications to seek appointment to the post of Upper Primary School Teacher, High School Teacher, and also for non-teaching posts in Aided Schools in the State. They all have one thing in common. The Certificates issued to them by the Medical Board constituted by the District Medical Officer, Department of Health Services, discloses that almost all of them are 100% blind.

2. W.P.(C) No. 19808/2021 is filed by Sri. K.J.Varghese, the President - Kerala Federation of the Blind - a Self-help Charitable Organization of Visually Impaired Persons. He claims that the Federation has more than 5000 members, and he is at the helm of one of the largest Organization for Persons with Disabilities in the State.

3. W.P.(C) No.17632/2021 is filed by Smt.Jaseela P., a 40 year old lady, suffering from hearing impairment with disability assessed at 60% by the District Medical Board.

4. The petitioners have approached this Court highlighting the continuous apathy, indifference and passivity shown by the State Government and also the Aided School Managers in implementing the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('1995 Act' for brevity), which came into effect on 07.02.1996 and the Rights of Persons with Disabilities Act, 2016, ('2016 Act' for brevity) which came into effect from 19.04.2017. They, with pain in their hearts, contend that the action being taken by the Educational Authorities under the Government to grant approval of appointments without providing for reservation in the appointment of teachers in the Schools, is violative of the fundamental rights guaranteed to them under Articles 14 and 15 r/w. Article 41 of the Constitution of India.

5. Before advertng to the individual grievances of the petitioners herein, it would be apposite to comprehend the background facts in some detail. It would also be profitable to delineate the circumstances which led to the enactment of the 1995 Act, which came into effect on 07.02.1996 and the 2016 Act, which came into effect from 19.04.2017, and also the pronouncements of the Hon'ble Supreme Court exhorting the Union

Government and the State Government to uphold the rights of the Persons with Disabilities (PwD) by implementing the provisions of the Act in its letter and spirit.

6. **Background Facts:**

6.1 It was during the launch of the Asian and Pacific Decade of Disabled Persons in 1993–2002 that an urgent need was felt among the member States for comprehensive legislation to protect the rights of Persons with Disabilities. Being one of the member States of the Economic and Social Commission for Asia and the Pacific held in Beijing in December 1992, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('1995 Act' for brevity) was enacted, which came into force on 07.02.1996. The Act, in addition to its other prospects, also provides better employment opportunities for Persons with Disabilities by way of reservation of posts and the establishment of a special employment exchange for them. Section 32 of the 1995 Act stipulates for identification of posts that can be reserved for Persons with Disabilities. Section 33 of the 1995 Act provides for reservation of posts, and Section 36 thereof provides that in case a vacancy is not filled up due to the non-availability of a suitable person with

disability, in any recruitment year such vacancy is to be carried forward in the succeeding recruitment year.

6.2. Though the Act came into force on 07.02.1996, the PwDs continued to be neglected and their rights trampled. This led the National Federation of Blind, a Society registered under the Societies Registration Act, 1860, to approach the Delhi High Court and file a Writ Petition in Public Interest seeking implementation of Section 33 of the 1995 Act, complaining that the Union of India had failed to provide reservation to the blind and low vision persons and they have virtually excluded them from the process of recruitment to the Government posts. The case was disposed of by the Delhi High Court by issuing a slew of directions. Against the judgment rendered by the Delhi High Court, the Union of India approached the Apex Court.

6.3 After considering exhaustively the grievances portrayed by the PwD, the Hon'ble Supreme Court in **Union of India and Another v. National Federation of the Blind and Ors.**¹ observed that, India, as a welfare State, is committed to promoting the overall development of its citizens, including those who are differently abled, in order to enable them to live a life of dignity,

¹ [(2013) 10 SCC 772]

equality, freedom, and justice as mandated by the Constitution of India. The roots of statutory provisions for ensuring equality and equalization of opportunities to the differently abled citizens in our country could be traced in Part III and Part IV of the Constitution of India. For persons with disabilities, the changing world offers more new opportunities owing to technological advancement; however, the actual limitation surfaces only when they are not provided with equal opportunities. It was held that bringing the disabled to the forefront of society based on their capabilities is the need of the hour. The Apex Court lamented the ways in which disabled persons were kept out by constructing social and practical barriers which were acting as an obstacle to attaining their true potential. It was observed that employment is a key factor in the empowerment and inclusion of people with disabilities. The nation was reminded that it is an alarming reality that disabled people are out of jobs not because their disability comes in the way of their functioning but rather because of the social and practical barriers preventing them from joining the workforce. The Apex Court noted that many disabled people were living in poverty and in deplorable conditions. They were being denied the right to make a useful contribution to their own lives and to the lives of their families and community.

6.4 The provisions of the 1995 Act and particularly Sections 32 and 33 of the 1995 Act were interpreted by the Hon'ble Supreme Court in **National Federation of Blind** (supra), and it was observed that the question for determination was whether the reservation provided for disabled persons under Section 33 of the 1995 Act is dependent upon the identification of posts as stipulated by Section 32. It was held that the computation of 3% reservation is based on the total number of vacancies in cadre strength and not on the basis of vacancies available in identified posts. It was also held that the computation of posts is not dependent upon the identification of posts as stipulated in Section 32 of the 1995 Act. The scope of identification comes into the picture only at the time of appointment in post identified for disabled persons and is not relevant at the time of computing 3% reservation under Section 33 of the 1995 Act. The contention of the Union Government that computation of reservation against the total vacancies in the cadre strength will violate the rule of 50% ceiling of reservation in favor of SC, ST and OBC as laid down by this Court in **Indra Sawhney v. Union of India**² was repelled, and it was held that the ceiling of 50% reservation applies only to reservation in favour of Other Backward Classes under Article 16(4) of the Constitution of India

² [1992 Supp (3) SCC 217]

whereas the reservation in favour of persons with disabilities is horizontal, which is under Article 16(1) of the Constitution. It was declared that 3% reservation for the disabled in terms of the 1995 Act has to be computed on the basis of the total strength of the cadre, i.e., both identified as well as unidentified posts.

6.5 In paragraph Nos. 50 and 51 of the **National Federation of the Blind** (supra), it was observed as follows:

“50. Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community.

51. The Union of India, the State Governments as well as the Union Territories have a categorical obligation under the Constitution of India and under various international treaties relating to human rights in general and treaties for disabled persons in particular, to protect the rights of disabled persons. Even though the Act was enacted way back in 1995, the disabled people have failed to get required benefit until today.”

6.6. The Apex Court went on to issue the following directions while disposing of the matter:

55. In our opinion, in order to ensure proper implementation of the reservation policy for the disabled and to protect their rights, it is necessary to issue the following directions:

55.1. We hereby direct the appellant herein to issue an appropriate order modifying the OM dated 29-12-2005 and the subsequent OMs consistent with this Court's order within three months from the date of passing of this judgment.

55.2. We hereby direct the "appropriate Government" to compute the number of vacancies available in all the "establishments" and further identify the posts for disabled persons within a period of three months from today and implement the same without default.

55.3. The appellant herein shall issue instructions to all the departments/public sector undertakings/government companies declaring that the non-observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and the Nodal Officer in department/public sector undertakings/government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default.

6.7. Despite the peremptory directions issued by the Hon'ble Supreme Court, when the Government continued to show apathy in implementing the

provisions of the Act, Justice Sunanda Bhandare Foundation, a Charitable Trust, approached the Apex Court praying for implementation of the provisions of the 1995 Act and for a direction for grant of reservation of 1% of the identified teaching posts in the faculties and colleges of various Universities in terms of Section 33 of the 1995 Act and also for a declaration that denial of appointment to the visually disabled persons in the faculties and colleges of various Universities in the identified posts is violative of their fundamental rights guaranteed under Articles 14 and 15 read with Article 41 of the Constitution of India. In **Justice Sunanda Bhandare Foundation v. Union of India and Another**³, the Hon'ble Supreme Court took note of the grievances and observed that though more than 18 years have passed since the 1995 Act came to be passed and still the Union, States, and Union Territories, who were bound to implement the provisions effectively, were not initiating any steps. It was observed as follows in paragraph Nos. 9, 10 and 12 of the judgment.

9. Be that as it may, the beneficial provisions of the 1995 Act cannot be allowed to remain only on paper for years and thereby defeating the very purpose of such law and legislative policy. The Union, States, Union Territories and all those upon whom obligation has been cast

³ [(2017) 14 SCC 1]

under the 1995 Act have to effectively implement it. As a matter of fact, the role of the governments in the matter such as this has to be proactive. In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief-oriented and not obstructive or lethargic. A little concern for this class who are differently abled can do wonders in their life and help them stand on their own and not remain on mercy of others. A welfare State, that India is, must accord its best and special attention to a section of our society which comprises of differently abled citizens. This is true equality and effective conferment of equal opportunity.

10. More than 18 years have passed since the 1995 Act came to be passed and yet we are confronted with the problem of implementation of the 1995 Act in its letter and spirit by the Union, States, Union Territories and other establishments to which it is made applicable.

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xxxxx

12. In our view, the 1995 Act has to be implemented in letter and spirit by the Central Government, State Governments and Union Territories without any delay, if not implemented so far. We, accordingly, direct the Central Government, State Governments and Union Territories to implement the provisions of the 1995 Act immediately and positively by the end of 2014.

6.8. In spite of the issuance of directions as above, nothing worthwhile was done by the Union Government and the States to implement the provisions of the Act. An interlocutory application was filed before the Apex Court to issue

directions to the Union Government, the State Government, and the Union Territories to comply with the judgment rendered in **Justice Sunanda Bhandare Foundation** (supra).

6.9. The Apex Court in **Justice Sunanda Bhandare Foundation v. Union of India and Another II** after detailing the provisions of the Act and also the repeated pronouncements and the directions issued by the Court, expressed its anguish over the manner in which the Government which was bound to ensure compliance of the judgment were refusing to implement the same. The State Governments were directed to detail the steps taken by them to ensure compliance with the 1995 Act. Insofar as the State of Kerala is concerned, details were furnished as Sl. No.33 in the Chart shown in paragraph 7 of the judgment.

33	State of Kerala	The State has assured various measures and various schemes but no status has been presented on the progress/implementation of the projects made so far.
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6.10. In the above judgment, which was rendered on 25.4.2017, the Hon'ble Supreme Court took note that before the Union and the State could do what the 1995 Act envisages, Parliament, realizing the National need for the

Rights of the Persons with Disability and commitment to the convention of the United Nations General Assembly, repealed the 1995 Act and brought in the Rights of Persons with Disabilities Act, 2016. It was observed after referring to the preamble of the 2016 Act that the Act visualizes a sea change and conceives of actualization of the benefits engrafted under the Act. The whole grammar of benefit has been changed for the better, and the responsibilities of many have been consolidated.

6.11. The following directions were issued in paragraph No. 25 of **Justice Sunanda Bhandare Foundation** (supra):

25. Regard being had to the change in core aspects, we think it apposite to direct all the States and the Union Territories to file compliance report keeping in view the provisions of the 2016 Act within twelve weeks hence. The States and the Union Territories must realise that under the 2016 Act their responsibilities have grown and they are required to actualise the purpose of the Act, for there is an accent on many a sphere with regard to the rights of those with disabilities. When the law is so concerned for the disabled persons and makes provision, it is the obligation of the law executing authorities to give effect to the same in quite promptitude. The steps taken in this regard shall be concretely stated in the compliance report within the time stipulated. When we are directing the States, a duty is cast also on the States and its authorities to see that the statutory provisions that are enshrined and applicable to the cooperative societies, companies, firms,

associations and establishments, institutions, are scrupulously followed. The State Governments shall take immediate steps to comply with the requirements of the 2016 Act and file the compliance report so that this Court can appreciate the progress made.

6.12. In tune with the directions issued by the Apex Court, the Government of Kerala issued G.O.(P) No.18/2018/SJD dated 18.11.2018. The said order is of utmost relevance and is extracted in full.

GOVERNMENT OF KERALA

Abstract

Social Justice Department - Reservation for Persons with Disabilities Providing 4% reservation as per the provisions of Rights of Persons with Disabilities Act 2016 and ensuring 3% reservation as per the provisions of Persons with Disabilities Act 1995 in aided schools and aided colleges including professional colleges- Orders issued.

SOCIAL JUSTICE (D) DEPARTMENT

G.O.(P)No.18/2018/SJD Dated, Thiruvananthapuram, 18/11/2018

- Read
1. G O (P) No: 20/1998/P&ARD dated 14/07/1998
 2. G O (P) No: 50/2007/ SWD dated 15.9.2007
 3. G O (P) No: 31/2008/SWD dated 19/05/2008
 4. G O (P) No: 46/2008/ SWD dated 19/07/2008
 5. G O (P) No: 61/2012/SWD dated 17/10/2012
 6. G O (P) No: 1/2013/SJD dated 3/1/2013
 7. G O (P) No: 30/2013/SJD dated 4/4/2013
 8. G O (P) No: 1/2015/SJD dated 5/1/2015
 9. G O (P) No: 18/2017/SJD dated 14/9/2017

ORDER

As per section 33 of Persons with Disabilities (Equal Opportunities,

Protection of Rights & Full Participation) Act 1995, every appropriate Government shall appoint in every establishment such percentage of vacancies not less than 3% for persons or class of Persons with Disability of which 1% each shall be reserved for persons suffering from (1) Blindness or low vision (ii) hearing impairment (iii) Locomotor disability or cerebral palsy in the posts identified for each disability. And as per section 2(k) of Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act 1995, establishment means a corporation established by or under a Central, Provincial or State Act or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), and includes Departments of a Government.

2. As per the Government Order read as 1st paper above Government had introduced a scheme for reserving 3% vacancies in Class III, Class IV posts in Public Services for appointment from Persons with Disabilities as envisaged in section 33 of Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act 1995. As per this scheme the District Collector was the Chairman of the selection committee for the appointment of Persons with Disabilities. As per Government Order read as 2nd paper above Government entrusted the selection process of Persons with Disabilities to 3% vacancies in all classes earmarked for them to Kerala Public Service Commission with effect from 1.1.2004. But the modalities of appointment and turn of Persons with Disabilities were fixed only as per G.O read as 4th paper above. Accordingly Kerala Public Service Commission started the selection process of Persons with Disabilities.

3. The 3% reservation in appointments in aided schools and aided colleges were not ensured from 7.2.1996, the date in which Persons with Disabilities Act 1995 came into force, as the appointments were not made

through Kerala Public Service Commission or through the selection committee chaired by the District Collectors.

4. The Rights of Persons With Disabilities Act 2016 came into force on 19.4.2017. As per section 34 (1) of Rights of Persons With Disabilities Act 2016. "Every appropriate Government shall appoint in every Government establishment, not less than four percent 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.

5. As per Section 2(k) of the Act, a "Government Establishment" is defined as a corporation established by or under a Central Act or State Act or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 2 of the Companies Act, 2013 (18 of 2013) and includes a Department of the Government.

6. The Government examined the matter in detail and are pleased to extend the provisions of section 2(k) of Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act 1995 and Rights of Persons with Disabilities Act 2016 to all educational institutions getting Government aid such as staff salary and other allowances, maintenance grant etc. with effect from 7.2.1996. The following instructions should be given to all

appointing authorities of such aided institutions by the concerned Administrative Departments immediately.

i) To ensure 3% reservation of the total number of vacancies in the cadre strength in appointments in aided schools and aided colleges including professional colleges to the posts which are identified as suitable for persons with disabilities and issued vide earlier Government Orders with effect from 7.2.1996 and to fill the backlog from 7.2.1996 to 18.4.2017 as per the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 with immediate effect.

ii) To provide 4% reservation of the total number of vacancies in the cadre strength in appointments in aided schools and aided colleges including professional colleges to the 839 posts which are identified / to be identified as suitable for persons with disabilities with effect from 19.04.2017 as per the provisions of Rights of Persons with Disabilities Act 2016. (emphasis supplied)

(By order of the Governor)

**BIJU PRABHAKAR IAS
SPECIAL SECRETARY**

The State Commissioner for Persons with Disabilities, Thiruvananthapuram

To

All Departments in Secretariat All Heads of Departments
The Director, Social Justice Department
The Director, Women & Child Development Department
The Accountant General (G & SSA/A & E), Kerala, Thiruvananthapuram

The Information and Public Relations(Web & New Media)Department

Forwarded/By order

Section Officer

6.13. By the above order, the Government has extended the provisions of Section 2(k) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and Right of Persons with Disabilities Act, 2016 to all educational institutions getting Government aid such as staff salary and other allowances, maintenance grant etc. with effect from 7.2.1996. Directions were also issued to all Authorities of such Aided Institutions to provide 3% reservation of the total number of vacancies in the cadre strength in appointments in Aided Schools and Aided Colleges, including Professional Colleges to the posts which are identified as suitable for persons with disabilities and issued vide earlier Government Orders with effect from 7.2.1996 and to fill the backlog from 7.2.1996 to 18.4.2017. The Government also ordered to provide 4% reservation of the total number of vacancies in the cadre strength in appointments in aided schools and aided colleges including professional colleges to the 839 posts which are identified / to be identified as

suitable for persons with disabilities with effect from 19.04.2017. (Emphasis supplied)

6.14. The above order was challenged by Corporate Managements before this Court. The issue raised by the Corporate Managements, including Minority Educational Institutions, was whether the provisions relating to reservation in employment for physically challenged persons would apply to Aided Schools and Colleges and also to minority institutions. Yet another issue was whether the backlog vacancies envisaged under the 1995 Act should be filled up after the 2016 Act came into force.

6.15. A learned Single Judge of this Court (Justice P.V. Asha, as she then was), after considering the entire conspectus of the statutory provisions and the law laid down by the Apex Court as well as this Court in the judgments rendered till then, held in **Renjith v. State of Kerala**⁴ that aided educational institutions would come within the meaning of 'establishment' as defined in Section 2(k) of 1995 Act and that of 'Government establishment' under Section 2(i) of the 2016 Act. It was observed that almost all the conditions of service of Government colleges, mutatis mutandis, would apply to the teachers of aided

⁴ [(2020 (5) KLT 324]

colleges and schools. It was further held that the expressions "Appropriate Government" occurring in Sections 32, 33 and 34 of both the Acts, as well as the definition of establishment/Government establishment therein, have to be construed liberally and in accordance with the legislative intent behind the Act which is a social welfare legislation with intent to integrate the differently abled with the mainstream. This Court went on to hold that minority rights or direct payment agreements entered into between the Government also would not stand in the way of implementation of the provisions contained in the Act. Though the appointment under the Act is to be done by the educational agencies, while undertaking such selection the requisite percentage shall be from among the persons with disability. It was held that it is the duty of the management of aided educational institutions to see that the differently abled persons are also given appointments under them against the 3%/4% of the vacancies. The contention of the Management that identification under the 2016 Act is yet to be made and reservations or appointments need be made only thereafter was held to be unsustainable. The petitions were disposed of directing the management to conduct the selection and appointment in tune with the Government Order dated 18.11.2018 in implementation of the 1995 Act and Rights of Persons with Disability Act, 2016 and to fill up the vacancies

as directed in the Government Order. The said judgment was confirmed in Appeal, and the same was later confirmed by the Hon'ble Supreme Court. In other words, the judgment rendered by this Court in **Renjith** (supra) has become final, and the Aided School Managers were required to conduct the selection and appointment in tune with the Government Order dated 18.11.2018 in implementation of the 1995 Act and 2016 Act and to fill up the vacancies as directed in the Government Order. The Government was also expected to ensure that the directions in the judgment are scrupulously complied with.

6.16. Incidentally, it needs mention at this juncture that a Public Interest Litigation was filed by a certain Balakrishnan seeking a declaration that the 1995 Act was applicable to all the educational institutions aided by the Government in the State of Kerala. The Division Bench of this Court in **Balakrishnan v. State of Kerala**⁵, after extensively quoting **Renjith** (supra), held that the judgment covers the entire aspects and issues raised in the Writ Petition. It was held that the aided educational institutions were bound to comply with the mandate contained under the Act 1995, read along with the

⁵ [2021 (4) KLT 375]

provisions of Act 2016.

6.17. With the above background facts, the pleadings in the writ petitions can be looked into.

7. Pleadings of the petitioner in W.P.(C) No.19808/2021 & 17632/2021:

7.1 For the sake of clarity and ease, W.P.(C) No.19808/2021 shall be treated as the main case, and parties and exhibits shall be as referred to in the said writ petition, unless otherwise stated.

7.2 According to the petitioner, in view of the fact that the Government Order dated 18.11.2018 has been upheld by this Court in **Renjith** (supra), the respondents were bound to implement the provisions of the 1995 Act and 2016 Act and provide 3% reservation for the disabled persons against the available vacancies with effect from 7.2.1996 to 18.4.2017 and provide for 4% reservation of the total vacancies in the cadre strength in Aided Schools with effect from 19.4.2017 in terms of the provisions of the 2016 Act.

7.3. The petitioner contends that Ext.P3 order dated 15.2.2021 was

issued by the Government instructing Managers of Private Aided Colleges in the State to include the provisions of reservation for disabled in the notifications inviting applications for filling up the posts and to prepare separate rank list including the candidates from the category of persons with disabilities. The Government has also ordered that immediate steps be taken to calculate the backlog of vacancies in Colleges and to fill up the same in available vacancies.

7.4. The petitioner contends that despite the issuance of Ext.P1 order, respondents 1 and 2 have not initiated any steps to implement the reservation. Instead, the 2nd respondent has now issued Ext.P4 order on 6.9.2021 instructing all the District Educational Officers and the Deputy Directors of Education in the State to approve the appointment made by the Managers of Aided Schools with effect from 15.7.2021 before 24.9.2021. If the above order is implemented, it would tantamount to granting the Aided School Managers an opportunity to flout the provisions of the 1995 Act and 2016 Act, judgments rendered by the Apex Court as well as this Court, and Ext.P1 order issued by the Government.

7.5. The petitioner contends that thereafter, the 1st respondent has issued Ext.P5 order on 8.11.2021, directing the Managers of Aided institutions

to ensure that 3%/4% reservation in appointments and to fill up backlog vacancies in terms of the 1995 or 2016 Act. Ext.P5 order was followed up with Ext.P6 order on 7.12.2021 as per which, a cut-off date is fixed as 8.11.2021 and to provide for reservation in vacancies which arise after the said date. The petitioner contends that the fixation of the cut-off date is against the provisions of the Statute, the judgment rendered by the Apex Court as well as this Court, and Ext.P1 Government Order. The petitioner contends that the arbitrary fixation of cut-off date would result in a situation wherein the disabled persons who are entitled to the reservation would be deprived of the rights guaranteed to them. It is further stated that if, in terms of Ext.P4 order, all the vacancies are filled up without providing for reservations to the disabled, the PwDs in the State will lose their employment opportunities, and many of them would become overaged.

7.6 According to the petitioner, in the judgment dated 16.10.2014, in W.P.(C) No.30334/2013, this Court had directed the Government to implement reservation of employment for disabled persons in Aided Management Schools and in terms of the directions so issued, the Government of Kerala has issued Ext.P7 order dated 9.9.2016 to amend Section 11 of the Kerala Education Act,

1958 and to implement the provisions for reservation in the Statute itself. However, those directions also remain only on paper.

7.7 It is on these assertions that these writ petitions are filed seeking to quash the Government orders fixing a cut off date and for a further direction to the 1st respondent to issue orders to the Aided School Managers in the State to include the provisions of reservation for the disabled in the notifications inviting applications for filling up the posts and to provide for 4% reservation with effect from 19.4.2017 and to fill up the same in arising vacancies. The petitioners have also sought for issuance of directions to the Aided School Managers in the State to implement 3% reservation to the disabled persons with effect from 7.2.1996 and to take immediate steps to calculate the backlog of vacancies with effect from 7.2.1996 to 18.4.2017 and to fill up the same in the arising vacancies.

8. When W.P.(C) No.19808/2021 came up for admission, this Court by a detailed order stayed all further proceedings pursuant to Ext.P4.

9. On 16.12.2021, an application to vacate the interim order along with a counter affidavit was filed by the 2nd respondent. The 2nd respondent

has placed on record Ext.R2(a) dated 8.11.2021, as per which the 1st respondent has directed all Managers in Aided institutions coming under the General Education department to ensure 3% reservation of the total number of vacancies in the cadre strength in appointments in Aided Schools to the post which are identified as suitable for persons with disabilities with effect from 1.2.1996 and to fill up the backlog from 7.2.1996 to 18.4.2017 and to provide 4% reservation for the total number of vacancies in the cadre strength in appointments in Aided Schools to the posts which are identified/ to be identified as suitable for persons with disabilities with effect from 19.4.2017 as per the 2016 Act. It is also stated that by issuing Ext.R2(a) order, the Government has already implemented Ext.P1 order. It is further stated that the Government has also issued Ext.R2(b) with direction to all Educational officers to collect the details of backlog vacancies of each Aided School in the State so as to fill up the vacancies which arise after 8.11.2021. G.O (P) No. 19/2020/SJD dated 25.8.2020 was also placed on record to substantiate that the Social Justice Department has come out with the said order identifying 49 categories of posts that can be reserved for persons with disabilities. In the above Government order, the teachers identified are Teachers (Primary) - Serial No. 6, HSA (Languages and Social Studies) - Serial No. 21, and Craft teacher (Serial

No. 27). This Court, under the belief that it was a bona fide exercise, limited the interim order dated 23.9.2021 to those posts identified for PwDs. This Court also made it clear that there would be no embargo in granting approval to those vacancies which do not fall within the 49 categories mentioned in G.O.(P) No. 19/2020/SJD.

10. The petitioners contend that G.O.(P)No.19/2020/SJD dated 25.8.2020, which was placed before this Court to show that 49 categories of posts were reserved for PwD, is not correct. According to the petitioner, the Social Justice Department has issued Ext.P8 G.O.(P) No.5/2019/SJD dated 7.5.2019 identifying the post of LPSA, UPSA, HSA in all subjects, HSST in all subjects, Vocational Teachers, Craft Teachers, and Music Teachers. Posts of non-teaching staff coming under the common category have also been identified for disabled persons. It is stated that in view of Ext.P8 Government Order, the interim order which was passed on 23.9.2021 was liable to be modified.

11. While the matter was pending, the 1st respondent has placed on record G.O.(MS) No.111/2022/G.Edn. dated 25.6.2022, detailing the scheme brought out by the Government to be followed for grant of reservation to PwD.

As per clause 12 of the scheme, it is stated that reservation can be granted only to vacancies that arise after Ext.P5 Government Order dated 8.11.2021.

12. Response of the respondents.

12.1 In the counter affidavit filed by the 1st respondent, it is stated that by issuing Ext.P1 on 18.11.2018, the intention of the Government was to provide for reservation in terms of the 1995 Act and 2016 Act in Aided Schools in the State. Though the said order was challenged by the management, the same was repelled by a learned Single Judge, which was upheld by the Division Bench. Even though the Managers preferred SLP before the Hon'ble Apex Court, the same was withdrawn on 5.7.2021. According to the 1st respondent, Ext.P1 was therefore under challenge before various courts till 5.7.2021. In view of the above and due to the pandemic, the Government was not in a position to timely implement Ext.P1.

12.2 It is further stated that Ext.P5 has now been issued to implement 3%/4% reservation in terms of 1995 Act/2016 Act. Directions have been issued by the 2nd respondent to calculate the backlog vacancies in all schools in the State of Kerala. Later, the Government issued G.O.(M.S) No.111/2022/G.Edn.

dated 25.6.2022 making it clear that backlog vacancies from 7.4.1996 should be calculated and the roster should be prepared to enable the first in 33 vacancies from 7.2.1996 and the first in 25 vacancies from 19.4.2017 onwards for absorbing differently abled in the process of recruitment in Aided Schools. It is stated that by issuing Ext.P5, the Government has implemented Ext.P1 and has ordered that the backlog has to be calculated and appointments should be made accordingly in vacancies that arise after 8.11.2021. According to the 1st respondent, if the contentions of the petitioners are accepted and appointments to differently-abled persons are granted retrospectively, the teachers who have been appointed and who have secured approval will have to be terminated from service. It would seriously affect the future prospects of a large number of teachers who are having approved services. It would also result in serious repercussions at the administrative levels of the Department. It may also affect the academic interest of the students. It is stated that the decision has been taken by the Government considering the interest of all parties.

12.3 The details of vacancies and appointments made during the past three years and also the anticipated vacancies of the current academic year has

been detailed in the counter which reveals the following:

Type of vacancy	2019-2020	2020-2021	2021-2022	2022-2023
Retirement	4689	No appointments were allowed due to COVID-19 pandemic	7583	3531
Additional Post	3157		Staff Fixation of 2019-2020 was ordered to be continued	1207 (Anticipated)

12.4 It is stated that the vacancies of the academic year 2019-2020 has already been filled up by the Managers and most of them have been approved. Only in a few cases where disputes have been raised, approval of appointments made during the academic year 2019-2020 are pending for approval. During the academic year 2020-21, no appointments were carried out due to the COVID situation prevailing all over Kerala. However, with effect from 15.07.2021, the regular vacancies that arose in 2020-2021 and 2021-2022 were allowed to be filled up. The total regular vacancies during 2020-2021 and 2021-2022 were 7583.

12.5 While so, teachers who had secured appointments in various schools lodged a complaint before the Government that the educational officers are not considering and disposing of their proposal of appointments in

accordance with the provisions of the Kerala Education Rules. It was in the said circumstances that Exhibit P4 communication was issued instructing the subordinate authorities to consider and dispose of all pending proposals for approval in accordance with law at any rate before 24/9/2021. It is stated that in view of the order of stay granted by this Court, approvals of appointments, which were pending as on the date of grant of stay, were not granted.

12.6 It is stated that an average of around 3500 new appointments are being made in Aided Schools in the State every year. During the current academic year, there are around 3500 anticipated vacancies. Those vacancies can be utilized for appointing differently-abled persons in accordance with the provision of the 1995 Act/2016 Act. It is further stated that the cut-off date was fixed as 8.11.2021 because it was on the said day that the Government issued Exhibit P5 order directing the educational Agencies/Managers to fill up the post in accordance with the provisions of the Disabilities Act. Such a cut-off date was fixed in order to balance the interest of differently-abled persons and all the teaching staff and non-teaching staff who have already been appointed. As per the scheme, the first vacancy arising in all schools after 8.11.2021 will have to be filled up by differently-abled persons in compliance with the provisions of

the Act. On the other hand, if the scheme is implemented retrospectively, it will have serious repercussions as a lot of teachers as well as non-teaching staff will have to be retrenched from service for no fault of theirs and they will be deprived of their livelihood. By identifying the backlog and appointing differently-abled persons prospectively, the interest of the persons with disabilities will also be safeguarded.

13. An application for impleadment was filed by a group of Aided School Managers as I.A. No. 2 of 2020 and the same was allowed.

13.1 In terms of the directions issued by this Court to the respondent State to calculate the backlog of vacancies in schools, an endeavor was made by the State to collect the data in all Aided schools throughout the State during the period from 7.2.1996 to 19.4.2017 in terms of the provisions of the 1995 Act and also the vacancies from 19.4.2017. For the period from 7.02.1996 to 18.4.2017, one vacancy was set apart for every 33 vacancies and if any leftover vacancy is found, it was carried over to the next period. For the period from 19.4.2017, one vacancy was set apart for every 25 vacancies for the differently abled candidates.

13.2. A chart showing the backlog vacancies at the rate of 3% from 1996 to 2017 and 4% from 19.4.2017 has also been placed on record along with a memo.

The said chart reads thus:

Category	Total No of Vacancies from 7.2.1996 to 18.2017 (Management wise)	3% vacancies from 7.2.1996 to 18.2017 (Management wise)	Total No of Vacancies from 19.4.2017 (Management wise)	4% vacancies from 19.4.2017 (Management wise)	Total vacancies that can be reserved for PwD from 7.2.1996
Primary	46712	487	47406	545	1032
HS	21298	327	15952	290	617
Non- teaching	7555	63	7712	53	116

13.3. It is stated that the above details shall be scrutinized and verified by the Educational Officers at the time of actual appointment. The respondents also state that they have collected the details of differently abled candidates registered with the Employment Exchanges from the Director of Employment. A chart showing the data collected is also made available, which reads as under:

Qualification	No. of Qualified Hands	Eligible for the Post
Plus-two, TTC/DLed, KTET	8	LP & UP
Degree, B.Ed, KTET	510	UP & HS

7th Qualified 10th Qualified 12th Qualified	122,832	Non-teaching (PTCM/FTM/OA/ Clerk)
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13.4 It is however stated that the data collection by the Educational Officer was carried within a limited span of time and it required further scrutiny.

14. In the counter affidavit filed by the 4th respondent, it is stated that as per the provisions of the Kerala Education Act and the Rules, in vacancies that arise in Aided Schools, the Manager is the appointing authority. It is stated that the statutory provisions do not place any restrictions on persons with disabilities to make an application for selection. However, by virtue of the provisions of the Kerala Education Act and the Rules framed thereunder and the Right of Children to Free and Compulsory Education Act, K-TET is also a mandatory qualification. It is contended that as per information obtained by the additional respondents, there are only a very few disabled people in the State who have passed the K-TET examination. It is stated that though the 2016 Act came into force with effect from 19.4.2017, the State Government has published the statutory Rules as per Gazette Notification only on 1.4.2020 and therefore the eligibility of persons with disability will arise only from the said date.

15. The pleadings in W.P.(C) No.17632/2021.

15.1 In this writ petition filed by a lady suffering from neural hearing loss with 60% disability, after detailing the sequence of events, the provisions of the Statute, and the judgments rendered by the Apex Court, it is contended that she filed an application before the 6th respondent Manager to appoint her to the post of HSA (Hindi) in the reservation category for PwD. However, on the premise that no instructions have been received from the DEO, no action was taken. It is contended that the petitioner is on the verge of crossing 40 years and any delay would result in the petitioner becoming overaged. The petitioner contends that she is eminently qualified and enough vacancies are available. It is in the afore circumstances that she has approached this Court seeking to quash Ext.P14 and for issuance of directions to the 6th respondent to implement the provisions of the 1995 Act/2016 Act and make appointment to the vacancies of HSA from persons with disabilities and for incidental reliefs.

15.2 When the matter came up for admission, this Court, by an interim order dated 23.12.2021, issued directions to the 6th respondent to consider her application. However, she was not appointed to the post.

16. Counter affidavit filed by the 6th respondent - Manager.

In the counter affidavit filed by the 6th respondent, it is stated that in terms of G.O.(M.S) No.3287/2021/G.Edn. dated 6.7.2021, the Manager filled the vacancy as on 15.7.2021, and the proposal for approval has been submitted before the DEO, Wandoor. It is further stated that the application filed by the petitioner on 14.7.2021 was received in the school office only on 20.7.2021, by which time, the appointment had already been effected. Ext.R6(a) communication was issued to the petitioner stating these aspects.

17. Arguments advanced by the petitioners

17.1 Smt P.K. Nandini, the learned counsel appearing for the petitioners in W.P. (C) No.19808 and W.P.(C) No.11673/2022, would make the following submissions:

- a) The 1995 Act and the 2016 Act are beneficial pieces of legislation enacted with intent to uplift the persons with disabilities and to place them at the level at which they can enjoy the right to equality guaranteed under the Constitution of India.

- b) It was in tune with the directions issued by the Apex Court in **National Federation of the Blind** (supra), **Justice Sunanda Bhandare Foundation I and II** (supra) that the Government finally came out with Exhibit P1 order providing for 4% reservation as per the provisions of Act 49 of 2016 and ensuring 3% reservation as per the provisions of Persons with Disabilities Act, 1995, in Aided schools and Aided colleges.
- c) In **Dinesan E. v. State of Kerala and Ors.**⁶ this Court had held that filling up of vacancies in the 3% quota only for the period from the date of identification of the posts was in violation of the mandate under Section 33 of the 1995 Act and directions were issued to fill up all the backlog vacancies for the period from 1996, the date of the commencement of the 1995 Act, irrespective of the date on which the Government identified the post or the date on which the selection was entrusted with the Public Service Commission. The judgment of the learned Single Judge was affirmed in **Kerala Public Service Commission v. E. Dinesan and Ors.**⁷.
- d) Exhibits P4 to P6 issued by the 1st respondent, ignoring the statutory

⁶ [2015 (1) KLT 540]

⁷ [2016 (2) KHC 910]

mandate, the law laid down by the Hon'ble Supreme Court and this Court in the judgments referred above, are in blatant violation of the rights of the disabled guaranteed under Article 14 of the Constitution of India.

- e) Instead of implementing the provisions of the Act in tune with the directions issued by the Apex Court and Exhibit P1 Government order, the 1st respondent has dubiously permitted the management to continue to make appointments without ensuring reservation of PwD.
- f) Though this Court, by an interim order stayed Exhibit P4 which directed the DEOs and the DDEs to approve the appointment within a time frame, the respondents have placed before this Court Exhibit P5 order dated 8.11.2021 to make it appear that the Managers were ordered to ensure reservation and to fill up the backlog vacancies. In the said order, no cut off date was mentioned. Later, they have come out with Exhibit P6 order on 7.12.2021 fixing 8.11.2021, the date of issuance of Exhibit P5 order, as the cut off date and further ordering that only those vacancies that arise after 8.11.2021 need to be filled up in terms of the statutory mandate.
- g) The reason stated by the 1st respondent to deprive the PwD of their

statutorily and constitutionally guaranteed right of the reservation is that it may result in unsettling the appointments already granted. The above justification cannot stand the test of law.

- h) The reason for the delay in implementing Exhibit P1, according to the respondents, is due to the fact that the Aided School Managers had withdrawn the SLP filed, challenging the judgment rendered in **Renjith** (supra) only on 5.7.2021. It is submitted that no stay was granted either by the learned Single Judge or the Division Bench and there is no justification in contending that the 1st respondent waited till 6.7.2021 in implementing Exhibit P1.
- i) When the appointments were effected in violation of the statutory provisions, and when the State aided to perpetuate the said illegality, no equity can be extended to such appointees. Reliance is placed on the judgment of the Apex Court in **B.Premanand v. Mohan Koikal**⁸, wherein it was held in unequivocal terms that the court cannot extend equity, if such extension of equity would amount to infraction of any provisions of the constitution and the laws.

⁸ [(2011) 4 SCC 266]

- j) The PwD have been deprived of their statutory and constitutional rights for the past 24 years and they cannot further be sidelined by one lame reason or the other.
- k) Countering the data placed before this Court to substantiate that there are very few persons in the disabled category who can aspire for appointment to various posts, it is submitted that no such exercise is warranted. The data is neither accurate nor can any reliance be placed on the same in the facts and circumstances. Instead of implementing the provisions of the Act in its letter and spirit, an attempt is made to flout the directions.
- l) Reliance is placed on the information from the website of the Kerala Social Security Mission to bring home the point that in India, as per the National Census 2011, the disabled population is 2.1% and it comes to 2,68,10557 and the male-female ratio is 58:42. The Planning Commission of India in the 11th Five Year Plan estimates that 5 to 6% of the population have disabilities. The above figures show that in India a considerable number of populations are having disabilities. According to the 2011 census, in Kerala there are about 7,61,843 disabled persons and the male-female ratio is roughly 51:48. These persons are still made to suffer in silence and wait

on the sidelines for the Government to wake up and give them their constitutionally guaranteed rights.

- m) Relying on the data furnished before this Court by the respondent, it is submitted that clear vacancies are available and under no circumstances that PwD can be asked to wait even further and if the same is done, it would amount to perpetuating the illegality. The practical difficulties mentioned in the counter is the making of the 1st respondent itself for which the PwDs cannot be blamed.
- n) The only option is to conduct special recruitment so that all vacancies that have arisen from Ext.P1 order can be filled by PwD.
- o) It is contended that if the cut off date as mentioned by the 1st respondent is accepted, the beneficial provisions of Act 1995/ 2016 shall always remain on paper, and PwD will continue to suffer the gross inequality meted out to them during the past few decades despite the law enacted to safeguard their interests.
- p) **Union of India v. Ravi Prakash Gupta⁹, State of Kerala and Ors. v.**

⁹ [(2010) 7 SCC 626]

Leesamma Joseph [2021 (9) SCC 208] and **Justice Sunanda Bhandare Foundation** (supra) are relied on and it is submitted that reservation under the Act is not dependent on the identification and such an assertion would run counter to the legislative intent with which the Act was enacted.

- q) The malafides of the respondents would be evident from the fact that they produced an order before this Court to substantiate that only 49 posts have been identified for PwD candidates. However, Ext.P8 order dated 7.5.2019 clearly reveals that all posts of LPSA, UPSA, HSA in all subjects, HSST in all subjects, Vocational teachers, Craft Teachers, and Music Teachers have been identified for disabled persons.
- r) Even if only one disabled person is available for appointment, as per the provisions of the enactment, the said person has to be appointed.

17.2. Smt. K.P Jayasree, the learned counsel appearing for the petitioner in W.P.(C) No.17632/2021, supported the submissions of Smt. P.K.Nandini. The learned counsel would point out that in addition to the school managed by the 6th respondent, there are vacancies in the schools managed by respondents 7

to 9 as well. However, the respondents in total disregard to the provisions of the 1995 Act and 2016 Act are refusing to appoint the petitioner, who is suffering from hearing disability.

17.3 Sri.Hood, the learned Special Government Pleader to the AG, has made the following submissions:

- a) W.P.(C) No.19808/2021 is filed by the President of an Association and not being a person aggrieved, he cannot have a valid cause of action. Reliance is placed on the law laid down by the Apex Court in **State of M.P. v. S.K.Dubey**¹⁰ to substantiate the said submission.
- b) Referring to W.P. (C) No.19808/2021, it is submitted that the prayer of the petitioner is only to grant reservation in arising vacancies. According to the learned Government Pleader, the Government has substantially granted the said request by issuing the orders which have been impugned in this writ petition. Nothing further survives to be decided in this writ petition.
- c) Reliance is placed on the law laid down by the Apex Court in **Vivek Singh v. State of UP**¹¹ and it is argued that if the prayer sought by the

¹⁰ [(2012) 4 SCC 578]

¹¹ [(2016) 9 SCC 295]

petitioners is allowed, it may result in a catastrophic situation and may unsettle the appointments already affected.

- d) Reliance is placed on **State of Jharkhand and Others v. Bijay Kumar and Others**¹² and it was argued that the Court, while granting reliefs in matters of public employment, should not ignore the interests of parties not before the Court or else it would violate the guarantee of equality of opportunity in public employment.
- e) It is submitted that the petitioners have not impleaded the persons who are likely to be affected if the case set up ends up in their favor. The appointments already made by the Managers would certainly be affected and the same will cause serious injustice to those persons who have been appointed.
- f) Relying on observations in **KPSC and Another v. E Dineshan and Others** (supra), it was submitted that filling up of the vacancies can only take place after the identification of the posts by the Government. The identification having been done as per G.O.(P) No.5/2019/SJD dated 7.5.2019, the petitioners cannot be heard to contend that they are to be

¹² [(2008) 17 SCC 617]

granted appointment from an earlier date.

- g) Vacancies that have arisen during the previous years have already been filled up and approval has also been granted by the authorities. Notional appointment cannot be granted with retrospective effect.
- h) Placing reliance on the law laid down in **Muhazin P. And Another v. Government of Kerala and Others**¹³, it is submitted that in the said judgment, this Court had laid down the manner in which carry forwarding of vacancies and interchange among categories are affected. It is submitted that in view of the principles laid down, the petitioner in W.P. (C) No. 17632/2021 cannot insist that a hearing impaired person has to be appointed in the vacancy which arose in the school.
- i) It is submitted that the petitioner in W.P.(C) No.17632/2021 will not have a fundamental right to the appointment in the post which arose in the school. Only if there is a public notice for that purpose can the petitioner aspire to submit an application and wait for the result.
- j) Relying on the judgment of the Apex Court in **Secretary, State of**

¹³ [2011 (1) KLT 71]

Karnataka and Others v. Umadevi and Others¹⁴, it is submitted that this Court in exercise of powers under Article 226 of the Constitution will not be justified in granting relief on misplaced sympathy.

- k) It is submitted that administrative orders are prospective in nature unless they are expressly or by necessary implication made to have retrospective effect. Reliance is placed on **Government of Andhra Pradesh and Others v. Sri. Sevadas Vidyamandir High School and Others**¹⁵ to substantiate the said submission. In view of the above, the petitioners cannot be heard to contend that the impugned order shall have application from an earlier date.
- l) It is submitted that a clear picture is yet to emerge with regard to the vacancies that are likely to arise during the current academic year. At any rate, the number of vacancies will be around 4500 and if that be the case, the qualified disabled persons can be accommodated by filling up the backlog as mentioned in the G.O.(MS) No.111/2022/G.Edn. dated 25.6.2022.

¹⁴ [(2006) 4 SCC 1]

¹⁵ [2011 (9) SCC 613]

17.4. Sri. George Abraham, the learned counsel appearing for the Managers of certain institutions and who have been impleaded as additional respondents, contended as follows:

- a) A close reading of Section 34 of the 1996 Act which provides for reservation along with section 2(s) of the Act which defines Benchmark disabilities would reveal that only persons with benchmark disabilities are entitled to reservation under the Act and the Rules framed thereunder.
- b) Chapter X of the 2016 Act is referred to and it is submitted that for the purpose of issuing certification for specified disabilities an elaborate procedure is prescribed. Reference is made to the 2017 Rules and it is submitted the manner in which application for certification is to be filed and the certificate to be issued are detailed thereunder.
- c) Reference is made to the report submitted by the DGE in W.P.(C) No.19808/2021 pursuant to directions issued by the Court and it is submitted that the total vacancies that can be reserved for PwD from 7.2.1996 is 1032 insofar as Primary School teachers are concerned, 617 in the High School and 116 insofar as Non-Teaching Staff is concerned. The

information received from the Directorate of Employment is that there are only 8 teachers in the State of Kerala, who are having the requisite qualification for LP/UP posts, 510 for UP/HS posts and 122,832 for Non-teaching Staff. This coupled with the data with regard to Backlog vacancies would make it clear that the grievance portrayed by the learned counsel appearing for the petitioners that PwD have been sidelined for years and that their places were taken by others are meritless. Only very few persons have passed the obligatory tests and all of them have been appointed in Government schools.

- d) Reference is made to Section 33 of the Act and it was argued that before providing reservation to PwD, the appropriate Government is required to identify the posts which can be held by the respective category of persons with benchmark disabilities. An expert committee is to be constituted under Section 33 (ii) of the Act with a representation of persons with benchmark disabilities for identification of the posts. Unless such an exercise is carried out in terms of the Statute, there is no point in contending that a particular category of disabled person is to be appointed.

18. Sri. K. Mohanakannan, the learned counsel appearing for the Private School Management Association, who got impleaded, advanced the following submissions:

- a) Exhibit P1 G.O. was issued on 18.11.2018. However, in order to have effect, the same has to be notified as contemplated under Section 2(q) of the Act. No such exercise has been carried out. The order was notified only on 8.11.2021 by Exhibit P5 order. In other words, the petitioners cannot contend that reservation is to be granted from 18.11.2018.
- b) Section 2(zb) mandates that the Government shall set up Special Employment Exchanges for the collection of data of disabled persons, for furnishing of information, and to do such other activities to cater to the interests of PwD. To date, no such exchange has been set up by the Government.
- c) Until 8.11.2021, the Managers were kept in the dark and they were not informed that they are bound to appoint PwD by granting reservation.

18.2 I have also heard Sri.Siji Antony, Sri.T.R.Jagadeesh and Smt.Shameena Salahudeen, the learned counsel appearing for additional

respondents who got impleaded. They reiterated the contentions advanced by the learned Government Pleader and the counsel appearing for the party respondents.

19. I have carefully considered the materials which have been placed on record by the contesting parties and have considered the submissions advanced.

20. The question raised in these writ petitions by the petitioners pertains to the implementation of the provisions of the 1995 Act/2016 Act insofar as it concerns the Aided Educational Institutions in the State of Kerala.

21. As per section 33 of the Act 1995, every Appropriate Government is statutorily bound to appoint in every Aided School Establishment vacancies not less than 3% for persons or class of Persons with Disability of which 1% each is to be reserved for persons suffering from (1) Blindness or low vision (ii) Hearing impairment (iii) Locomotor disability or Cerebral palsy in the posts identified for each disability. However, despite the statutory mandate, the 3% reservation in appointments in aided schools was not ensured from 7.2.1996, the date on which the 1995 Act for one reason or the other. The 2016 Act came

into force on 19.4.2017. As per Section 34 (1) of the 2016 Act, every Appropriate Government is required to appoint in every Government establishment, not less than 4% 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, 1% each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and 1% 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 disability.

22. In terms of the directions issued by the Apex Court in **Justice Sunanda Bhandare Foundation** (supra), the Government, albeit belatedly, came out with G.O.(P) No.18/2018/SJD dated 18/11/2018 extending the provisions of section 2(k) of Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995, and Rights of Persons with Disabilities Act, 2016, to all educational institutions getting Government aid

such as staff salary and other allowances, maintenance grant etc. with effect from 7.2.1996. The Government, by the above order, has ordered that all aided institutions getting Government aid shall ensure 3% reservation of the total number of vacancies in the cadre strength in appointments in Aided schools to the posts which are identified as suitable for persons with disabilities and issued vide earlier Government Orders with effect from 7.2.1996 and to fill the backlog from 7.2.1996 to 18.4.2017 as per the provisions of the 1995 Act with immediate effect. It was further ordered that 4% reservation of the total number of vacancies in the cadre strength shall be made in appointments in aided schools which are identified / to be identified as suitable for persons with disabilities with effect from 19.04.2017 as per the provisions of the 2016 Act.

23. The said order was challenged before this Court and in **Renjith** (supra), a learned Single Judge of this Court repelled the challenges raised by the Managements holding as follows:

- a) The order passed by the State Government directing implementation of the provisions of Central Acts enacted for the integration of persons with disability with the mainstream irrespective of the community to which they belong and without interfering with the right of choice in aided schools and colleges is unassailable

- b) The Act of 1995 is a social welfare legislation it has to be interpreted liberally so as to achieve the purpose in full and every establishment is bound by the Act and should imbibe the true spirit of the Act and implement the same.
- c) Aided educational institutions would come within the meaning of establishment as defined in S.2(k) of 1995 Act and that of Government establishment under S.2(i) of the 2016 Act.
- d) It is the duty of the managements of aided educational institutions, to see that the differently abled persons are also given appointment under them against the 3%/4% of the vacancies, even if no directions are issued by the State Government.
- e) In view of the law laid down in Ravi Prakash Gupta (Supra) appointments to Civil Service are to be made against the vacancies in the 3% quota irrespective of the date on which the posts were identified. It cannot be said that appointment could only be made after identification of the posts as accepting the said contention would be contrary to the legislative intent behind the 1995 Act.
- f) Delay in identification of posts under S.32 cannot be used as a tool to defer or deny the benefit of appointment under S.33 of the Act to the differently abled persons. Practical barriers cannot be set up to prevent the differently abled persons from joining the workforce.
- g) In view of the law laid down in Rajeev Kumar Gupta v. Union of India (2016) 13 SCC 153), the difference between reservation under Article16(4) and reservation under Article16(1) has been clearly delineated and Article16(1) does not prevent any preferential/differential treatment to the physically challenged.

- h) Relying on the law laid down in *Dineshan E. v. State of Kerala & Ors.* (2015 (1) KLT 540) and the judgment rendered by the Division Bench in *Kerala Public Service Commission v. E. Dineshan & Ors* (2016 (2) KHC 910) it was held that filling up of vacancies in the 3% quota only for the period from the date of identification of the post was in violation of the mandate under S.33 of the 1995 Act.
- i) The Act passed by Parliament would prevail and the State is duty bound to implement the provisions contained in S.33 from the date of the enactment.

After holding as above, the learned Single Judge disposed of the writ petition by issuing the following directions in the operative part of the judgment:

W.P.(C).Nos.224/2019 and 4753/2020 are disposed of with a direction to the respective managements to conduct the selection and appointment in tune with the aforesaid Government Order in implementation of the 1995 Act and Right to Persons with Disability 2016. They are bound to fill up the vacancies as directed in the Government Order. As the respondents colleges in the Writ Petitions have not filled up any vacancy under the 3%/4% quota, they shall fill up the vacancies only in accordance with the Government Orders, after issuing notification specifying the same.

The declaration made by this Court would apply on all fours to the Aided School management as well.

24. The judgment was taken in appeal and their Lordships of the

Division Bench upheld the findings of the learned Single Judge on all counts. The Division Bench went on to hold that the Aided Educational Institutions will also come under the definition of the term establishment under the 1995 Act and "Government Establishment" under the 2016 Act. Insofar as the contention that posts have not been identified and therefore no reservation can be granted was repelled by holding as follows in paragraph 15 of the judgment.

The next contention urged is that when the posts were not identified, the posts had already been identified in different establishments including educational institutions run by the Government. But the Government did not chose to direct the aided institutions to comply with the provisions of the Act. In fact,when posts in schools and colleges were notified, it equally applies to aided institutions as well. But they did not comply with the provisions of the Act. Ext.P8 is only intended to ensure that the identification of posts which has already been done under the provisions of the 1995 Act, would apply to aided educational institutions as well, and they have been directed to fill up the backlog vacancies.

25. The Division Bench held that there was no reason to interfere with the findings of the learned Single Judge, and the judgment was confirmed. Though the matter was taken up in appeal before the Hon'ble Supreme Court, the same was later withdrawn by the Managers for reasons best known to them.

26. In view of the above sequence of events, the conclusion is inescapable that Ext.P1 order dated 18.11.2018 was given the imprimatur by this Court and under no circumstances could the Government or the Aided School managements act against the directions issued by this Court.

27. Instead of acting strictly in accordance with Ext.P1 and the judgment rendered by this Court, the respondents have come up with unsustainable excuses which can only be regarded as a subterfuge adopted to deny the rights of PwD.

28. In the counter affidavit filed by the 1st respondent, the excuses offered for non-complying with the judgment rendered in **Renjith** (supra) are twofold. The first contention is that Ext.P1 order was under challenge before various courts till 5.7.2021. It has to be immediately noticed that neither the learned Single Judge or the Division Bench had interfered with the order dated 18.11.2018 issued by the Government or had stayed its operation. In that view of the matter, there is absolutely no justification on the part of the 1st respondent to contend that they were bound to give effect to their own order only after the SLP was withdrawn by the management on 5.7.2021. The next contention in the counter is that after 18.11.2018, the management carried out

appointments, and some of the appointments have been approved by the educational authorities. They also contend that if the contentions made by the petitioners are accepted and steps are taken to fill up the backlog vacancies at least from Ext.P1 dated 18.11.2018, it would affect the prospects of a large number of teachers who were appointed after the date of issuance of Ext.P1. It has to be immediately noticed that this Court in **Renjith** (supra) had only confirmed Ext.P1 order dated 18.11.2018 issued by the 1st respondent. There cannot be any doubt that Ext.P1 order was issued pursuant to the judgments rendered by the Apex Court in **National Federation of Blind** (supra) and **Justice Sunanda Bhandare Foundation** (supra). If appointments were carried out by the management and the official respondents granted approval, they themselves are to be blamed for blatant violation of their own order. In other words, the 1st respondent cannot be heard to contend that they waited till 15.7.2021 to enforce their own order. The attempt of the 1st respondent, it appears, is to portray that they have been initiating all steps possible to ensure that the statutory, as well as the constitutional rights of the PwD, are protected. However, the tenor of the stand taken by the 1st respondent clearly is against the interest of PwD which the State was bound to protect. The double standard adopted by the 1st respondent leads one to the impression that their response

to the situation is akin to the old saying "running with the hares and hunting with the hounds".

29. There is yet another matter. In the year 2014, one Jasitha K.N., a person suffering with disability had approached this Court and had filed W.P.(C) No.30334/2013 complaining of the non-implementation of the provisions of Act of 1995 and relying on **National Federation of Blind** (supra) sought issuance of directions to the State to provide for reservation in all State Public Sector undertakings/Autonomous Institutions/Aided Schools etc. She complained that the respondents were not complying with the directions and sought for issuance of directions to the management of Aided Schools within the State to reserve postings for physically disabled persons and to compute vacancies available on the basis of such reservation. In the counter affidavit filed by the DPI, it was contended that appointment in Aided Schools is the prerogative of the Manager in accordance with the provisions of the Kerala Education Act and Rules and as such, the Government is not empowered to issue any directions with respect to appointments. It was also contended that the Aided School, which was arrayed as the 6th respondent in the writ petition would not come within the definition of 'establishment' under Section 2(k) of the 1995 Act solely

on the ground that Management is provided with aid from the Government.

Repelling the contentions, this Court had held as follows in the judgment which was rendered on 16.10.2014.

5. This court is of the opinion that the view taken by the 3rd respondent cannot be accepted. Aided schools are coming under the direct payment scheme of the Government and the salary of teachers and non teaching staff is paid from the public exchequer. Further, provisions contained in the Kerala Education Act and the Kerala Education Rules provides authority on the Government to put restrictions with respect to functioning of the aided schools. The managements are bound to comply with such directions issued by the Government from time to time, including directions if any with respect to reservation of any posts of teaching or non-teaching staff for any particular category. Hence the contention that appointment in aided school is the absolute prerogative of the management cannot be accepted.

6. Further question to be decided is as to whether the management will come within the definition of 'establishment' defined under Section 2(k) of the Disabilities Act. The Act provides that 'establishment' means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government. The establishment of an aided school is on the basis of provisions contained in the KE Act and KER. Such establishment is totally controlled in its functioning by the Government. Further it is aided by the Government with respect to payment of salary to the teaching and non teaching staff. Hence this court is of the opinion that aided schools within the State will come perfectly within the definition of 'establishment' contained under Section 2(k) of the Disabilities Act.

7. Going by directions contained in the judgment in National Federation of the Blinds' case (supra) it is for the State Government to take necessary steps in compliance with the directions. The State

Government has to formulate its policy with respect to issuing necessary directions to the management of aided schools within the State, in this regard.

8. Learned counsel for the petitioner had produced for perusal of this court, a reply received from the Government in this regard obtained under the right to Information Act. It is indicated that Government have issued directions to the heads of all departments, District Collectors, Departments in the Government Secretariat, Public Service Commission, Chief Executives of all Public Sector undertakings and the Advocate General to report vacancies earmarked for disabled persons. But it does not indicate anything to the effect that the Government have taken any decision with respect to appointments in the aided educational institutions.

9. Under the above mentioned circumstances this court is of the opinion that interest of justice will be achieved by issuing direction to respondents 1 and 2 to take appropriate decision in the matter and to take necessary steps for implementation of the directions contained in the decision of the Honourable apex Court, cited above, with respect to all aided educational institutions within the State. Needful steps in this regard shall be taken at the earliest possible, at any rate within a period of three months from the date of receipt of copy of this judgment.

30. This Court, after holding that Aided Schools in the State would come within the definition of 'establishment' under Section 2(k) of the Act, issued further directions to the State Government to formulate a policy and issue specific directions to the management of Aided Schools. Directions were also issued to initiate necessary steps for implementation of the directions issued by the Apex Court with respect to all educational institutions within the State.

31. In terms of the directions so issued, the Government has come out with G.O. No. 155/16/G.Edn. dated 09.09.2016 ordering that the provisions of Act 1995 would apply to Aided Schools and that necessary steps shall be initiated to amend the various provisions of the Kerala Education Act and the Rules. However, nothing further transpired thereafter.

32. The contention of the 1st respondent that the rights of persons, who were appointed after issuance of Ext.P1 would be affected, if the rights of the PwD are protected, cannot be sustained. It appears that the State is banking on equity to support the stand. The Apex Court in **B.Premanand and Ors. v. Mohan Koikal and Ors.** (supra) had held that when there is a conflict between law and equity, it is the law which is to prevail. Equity can only supplement the law when there is a gap in it but cannot supplant the law. In **Madamanchi Ramappa v. Muthaluru Bojjappa**¹⁶, the Apex Court has observed that what is administered in courts is justice according to law and considerations of fair play and equity, however important they may be, must yield to clear and express provisions of the law. In **Council for Indian School Certificate Examination v. Isha Mitta**¹⁷, it was held that considerations of

¹⁶ [AIR 1963 SC 1633]

¹⁷ [(2000) 7 SCC 521]

equity cannot prevail and do not permit a High Court to pass an order contrary to the law. In **P.M Latha v. State of Kerala**¹⁸, it was held that Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law. In **E. Palanisamy v. Palanisamy**¹⁹, it was held that Equitable considerations have no place where the Statute contained express provisions. The Managers, as well as the Government, were well aware of the implications of Ext.P1 with effect from 18.11.2018. If any appointments have been made in express violations of the Government Order, it can only be reckoned that the appointments were made to flout the order and to deny the PwD, who are the beneficiaries of such an order, the benefits to which they were entitled to. The persons who are suffering from disabilities cannot be made to suffer even further due to the vagaries of men. Clearly the attempt is to delay the implementation of the Law enacted by the Parliament and the law settled by the Apex Court as well as this Court and later contend that due to fait accompli, no benefit can be granted to PwDs.

33. Much reliance is placed by the learned Special Government Pleader

¹⁸ [(2003) 3 SCC 541]

¹⁹ [(2003) 1 SCC 123]

to the law laid down by the Apex Court in **Vivek Singh (supra)** and **Bijay Kumar** (supra) and it was argued that while granting reliefs in matters of public employment, the courts are to be aware of the interest of the parties who are not before the court. It was also argued that the appointments made by the Managers would be adversely affected and it would unsettle the entire process. The judgments cited by the learned Special Government Pleader have no application to the facts of the instant case. Insofar as the petitioners herein are concerned, they are the beneficiaries of the Order passed on 18.11.2018 and their right was upheld by the Constitutional Courts. As held by the Apex Court in **National Federation of the Blind** (supra) in the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief-oriented and not obstructive or lethargic. A little concern for this class, who are differently abled can do wonders in their life, to help them to stand on their own and not remain at the mercy of others. A welfare State like India must accord its best and special attention to a section of our society that comprises differently-abled citizens. This is true equality and effective conferment of equal opportunity. In that view of the matter, the decisions cited by the learned Special Government Pleader cannot have any application. Furthermore, if the said contention is

accepted, it would amount to granting a premium to the respondents to violate enforceable Government Orders and the judgments rendered by this Court.

34. Furthermore, the Apex Court in **B.N Nagarajan v. State of Karnataka**²⁰ emphasized that when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution of India in contravention of the rules. In the case on hand, the provisions of the Parliamentary enactment confer the right to PwD and the same cannot be curtailed by the Government in exercise of its executive powers under Article 162. As held by the Apex Court in **Secretary, State of Karnataka v. Umadevi (3) and Others**²¹, in view of the constitutional scheme of public employment in our country, the executive, or for that matter the court, in appropriate cases, would only have the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court would not extend to the executive or the court being in a position to direct that an appointment be made in clear violation of

²⁰ [(1979) 4 SCC 507]

²¹ [(2006) 4 SCC 1]

the constitutional scheme, and the statutory enactments made in that behalf be regularized. In that view of the matter, the contention of the respondents that it would not be proper to unsettle the appointments which have been carried out by the Management to confer any sort of benefits to the PwD in terms of the 1995 Act/2016 Act cannot be sustained.

35. The next contention advanced by the respondents with regard to the failure of the Government to identify the posts wherein the PwD could be accommodated. It has to be noticed, at this juncture, that in the State of Kerala, the Government had introduced a scheme for reserving 3% vacancies in public service for appointment of PwD in the year 1998. The Kerala Public Service Commission initiated the recruitment process of Persons with Disabilities in Government Services. It was as per G.O.(P) No. 20/1998/P & ARD dated 14/7/1998 that the Government had identified posts in Class III and 18 posts in Class IV as suitable for appointment of physically disabled persons in various Government Departments. Thereafter G.O.(P) No. 21/08/SWD dated 7.3.2008, G.O.(P)No.11/2009/SWD dated 10/02/2009, G.O.(P) No. 8/2010/SWD dated 1/2/2010, G.O.(P) No. 9/2010/SWD dated 1/2/2010, G.O.(P) No. 9/2010/SWD dated 9/2/2010, G.O.(P) No. 95/2010/SWD dated 13/12/2010,

W.P.(C) No.19808/2021 & connected cases :83:

G.O.(P) No. 26/11/SWD dated 3/5/2010 and G.O.(P) No. 57/11/SWD dated 27/11/2011 were issued by the Government identifying several posts in Class III and Class IV categories in various Government Departments, State Public Sector Undertakings/Autonomous Institutions under the State Government, Universities, Corporations, Institutions and such other institutions. Later, the Government appointed an expert committee for the purpose of identifying more posts. Based on the report, the Government came out with G.O.(P) No. 1/13/SJD dated 03.01.2013 ordering that 3% reservation to Physically Handicapped Candidates in the categories of posts identified as suitable for appointment of physically handicapped as per the orders issued by the Government shall be extended to the similar categories in the State Public Sector Undertakings/Autonomous institutions under the State Government/ Universities/Co-Operative Institutions and such other bodies also regardless of the qualification prescribed for the same. In the Appendix attached to the Government Order dated 14.07.1998, posts suitable for the Physically handicapped are detailed.

The posts identified as per Government Order dated 14.7.1998 relevant in the instant case are detailed under

Sl No	Name of Post	Name of Department
4	Teachers (Primary)	Locomotor Disability/cerebral Palsy/Low Vision
19	High School Assistant (Languages and Social Studies)	Locomotor Disability/cerebral Palsy/hearing Impairment/Low Vision
20	Assistant Teacher (School for Blind)	Locomotor Disability/cerebral Palsy/Low Vision
22	Craft Teacher	Locomotor Disability/cerebral Palsy/Low Vision
32	Music teacher	Blindness/ Low Vision

The list of posts identified as suitable for PwD as detailed in the appendix to Government Order dated 10.2.2009 are detailed below

Sl No	Name of Post	Name of Department	Category
64	High School Assistant (Science)	General Education	Locomotor Disability/ cerebral Palsy/hearing Impairment/Low Vision
65	High School Assistant (Physical Science)	General education	Locomotor Disability/cerebral Palsy Hearing Impairment
122	Teacher Gr II	Upper and Lower Primary School, General Education Department	Locomotor Disability/cerebral Palsy/hearing Impairment/Low Vision
124	Teacher (Drawing cum Needle Work)	Upper and Lower Primary School, General Education Department	Locomotor Disability/cerebral Palsy/hearing Impairment/Low Vision

The list of posts identified as suitable for PwD as detailed in the appendix to Government Order dated 9.2.1010 are detailed below

Sl No	Name of Post	Name of	Category
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		Department	
124	High School Assistant (Languages and Social Studies)	Education department	Locomotor Disability/cerebral Palsy/Blindness//Low Vision/hearing Impairment

The list of posts identified as suitable for PwD as detailed in the appendix to Government Order dated 4.4.2013 are detailed below

SI No	Name of Post	Name of Department	Category
124	High School Assistant (Physical Science)	Education department	Locomotor Disability/cerebral Palsy/Blindness//Low Vision/hearing Impairment

The list of posts identified as suitable for PwD as detailed in the appendix to Government Order dated 26/11/2018 are detailed below

SI No	Name of Post	Name of Department	Category
124	Teachers (LPSA,UPSA,HSA, HSST)	Education department	Low Vision/hearing Impairment

36. The details of the Government orders identifying the posts have been extracted to substantiate that the Government had already identified the posts for appointment in Government Schools and therefore there was no reason why the Aided Schools receiving aid and salary disbursement from the Government were not included in the same.

37. Even in the scheme brought out by the Government, during the pendency of this Case to regulate the process of reservation and the filling up of backlog vacancies, reference is made to G.O.(P) No. 5/19/SJD dated 7/05/2019, wherein suitable posts for disabled teachers were identified. The said government order is extracted herein below.

കേരള സർക്കാർ

സംഗ്രഹം

സാമൂഹ്യനീതിവകുപ്പ് - 2016ലെ അംഗപരിമിതാവകാശ നിയമം - അംഗപരിമിതർക്കുള്ള തൊഴിൽ സംവരണം - അധ്യാപക തസ്തികകളിലെ അംഗപരിമിത സംവരണ ഉത്തരവിന് വ്യക്തത/ഭേദഗതി വരുത്തി ഉത്തരവ് പുറപ്പെടുവിക്കുന്നു.

സാമൂഹ്യനീതി (ഡി) വകുപ്പ്

സ.ഉ.(അച്ചടി) നം.5/2019/സാ.നീ.വ തീയതി, തിരുവനന്തപുരം, 07/05/2019

1. സ.ഉ(അച്ചടി)നം.61/2012/സാ.നീ.വ. തീയതി 17.10.2012

പരാമർശം:-

2. സ.ഉ(അച്ചടി)നം.1/2013/സാ.നീ.വ തീയതി 03.01.2013

3. സ.ഉ(അച്ചടി)നം 30/2013/സാ.നീ.വ തീയതി 4.4.2013

4. സ.ഉ(അച്ചടി)നം.20/2018/സാ.നീ.വ തീയതി 26.11.2018

5. എക്സ്പർട്ട് കമ്മിറ്റിയുടെ 23.01.2019ലെ യോഗത്തിന്റെ നടപടികുറിപ്പ്

6. കേരള പബ്ലിക് സർവ്വീസ് കമ്മീഷന്റെ 19.3.2019 ലെ AVIII14068/03/GW/DYA നമ്പർ കത്ത്

ഉത്തരവ്

പരാമർശം 1 ലെ ഉത്തരവ് പ്രകാരം താഴെ പറയുന്ന അധ്യാപക തസ്തികകൾ അവയ്ക്കുനേരെ സൂചിപ്പിച്ചിട്ടുള്ള വിവിധ അംഗപരിമിത വിഭാഗങ്ങൾക്ക് അനുയോജ്യമായി

കണ്ടെത്തി ഉത്തരവായിരുന്നു.

1. Higher Secondary School Teacher (Art & commerce) - Locomotor Disability/Cerebral Palsy, Low Vision/Blindness
2. Higher Secondary School Teacher (Science) - Locomotor Disability/Cerebral Palsy, Low Vision/Blindness
3. Higher Secondary School Teacher (Jr.) (Art & commerce) Locomotor Disability/Cerebral Palsy, Low Vision/ Blindness.
4. Higher Secondary School Teacher Jr. (Science) -Locomotor Disability/Cerebral Palsy, Low Vision/ Blindness.
5. Vocational Teacher/vocational instructor- Locomotor Disability/Cerebral Palsy, Low Vision/ Blindness.
6. Non Vocational Teacher (Sr) - Locomotor Disability/Cerebral Palsy, Hearing Impairment, Low Vision/Blindness
7. Non Vocational Teacher (Jr.) - Locomotor Disability/Cerebral Palsy, Hearing Impairment, Low Vision/ Blindness.

പരാമർശം 2 ലെ ഉത്തരവിൽ താഴെ പറയുന്ന അധ്യാപക തസ്തികകൾ അവയ്ക്കു നേരെ സൂചിപ്പിച്ചിട്ടുള്ള വിവിധ അംഗപരിമിത വിഭാഗങ്ങൾക്ക് അനുയോജ്യമായി കണ്ടെത്തി ഉത്തരവായിട്ടുണ്ട്.

1. Teachers (Primary) - Locomotor Disability/Cerebral Palsy, Low Vision
2. HSA (Languages and Social Studies) Locomotor Disability/Cerebral Palsy, Hearing Impairment, Low Vision/Blindness
3. Craft Teacher - Locomotor Disability/Cerebral Palsy, Low Vision
4. Music Teacher - Blindness / Low Vision
5. Part time Instrumental music teacher - Blindness / Low Vision
6. High School Assistant (Science) - Locomotor Disability/Cerebral Palsy, Hearing Impairment, Low Vision/Blindness
7. High School Assistant (Physical Science) - Locomotor Disability/Cerebral Palsy, Hearing Impairment
8. Teacher Grade II (Upper & Lower Primary School) - Locomotor Disability/Cerebral

Palsy, Hearing Impairment, Low Vision/Blindness

- 9. Teacher (Rattan workers - Higher Secondary School) - Locomotor Disability/Cerebral Palsy, Hearing Impairment, Low Vision/Blindness
- 10. Teacher (Drawing-cum-Needle work- Upper & Lower primary School)- Locomotor Disability, Cerebral Palsy, Hearing Impairment.
- 11. LPSA/UPSA - Locomotor Disability/Cerebral Palsy, Low Vision/Blindness

പരാമർശം 3 ലെ ഉത്തരവ് പ്രകാരം താഴെ പറയുന്ന അധ്യാപക തസ്തികകൾ അവയ്ക്കുനേരെ സൂചിപ്പിച്ചിട്ടുള്ള വിവിധ അംഗപരിമിത വിഭാഗങ്ങൾക്ക് അനുയോജ്യമായി കണ്ടെത്തി ഉത്തരവായിട്ടുണ്ട്.

- 1. High School Assistant (Physical Science) - Locomotor Disability/Cerebral Palsy, Hearing Impairment, Low Vision/Blindness
- 2. High School Assistant/UPSA Urdu - Locomotor Disability/Cerebral Palsy, Low Vision/ Blindness

പരാമർശം 4 ഉത്തരവ് പ്രകാരം എല്ലാ അധ്യാപക തസ്തികകളും ഇതുവരെ സംവരണം അനുവദിക്കാതിരുന്ന Low Vision, Hearing Impairment വിഭാഗങ്ങൾക്ക് അനുയോജ്യമായി കണ്ടെത്തി ഉത്തരവായിട്ടുണ്ട്.

ടി ഉത്തരവിൽ എല്ലാ അധ്യാപക തസ്തികകളിലും ലോ വിഷൻ, ഹിയറിങ് ഇമ്പയർമെൻറ് വിഭാഗങ്ങൾക്കായി പരിമിതപ്പെടുത്തിയിട്ടുണ്ടോയെന്നു സംശയമുളവാക്കുന്നുവെന്നും വിവിധ അധ്യാപക തസ്തികകളുടെ നിയമന നടപടികൾ തടസ്സപ്പെട്ടിരിക്കുകയാണെന്നും അതിനാൽ ഹയർ സെക്കന്ററി എഡ്യൂക്കേഷൻ, വൊക്കേഷണൽ ഹയർ സെക്കന്ററി എഡ്യൂക്കേഷൻ, തുടങ്ങി വിവിധ വകുപ്പുകൾക്ക് കീഴിലുള്ള എല്ലാ അധ്യാപക തസ്തികകൾ, പൊതു വിദ്യാഭ്യാസ വകുപ്പിന് കീഴിലുള്ള LPSA, UPSA, HSA, Junior Language Teacher തുടങ്ങിയവർക്കായുള്ള ഭിന്ന ശേഷി സംവരണം സംബന്ധിച്ചും. ഏതൊക്കെ തസ്തികകളിൽ ഏതൊക്കെ ഭിന്നശേഷിക്കാർ അനുയോജ്യരാണെന്നു സൂചിപ്പിച്ചുകൊണ്ടുമുള്ള ഏകീകൃതവും വ്യക്തവുമായ സർക്കാർ ഉത്തരവ് ലഭ്യമാക്കുവാൻ പരാമർശം 6 പ്രകാരം പി.എസ്.സി ആവശ്യപ്പെട്ടിട്ടുണ്ട്.

സർക്കാർ ഇക്കാര്യം വിശദമായി പരിശോധിച്ചു. മേൽ പരാമർശിച്ച 1, 2, 3 ഉത്തരവുകളെല്ലാം നിലനിൽക്കുന്നതോടൊപ്പമാണ് പരാമർശം 4 ഉത്തരവ് പുറപ്പെടുവിച്ചത്. അതിനാൽ പരാമർശം 4 ഉത്തരവിനോടൊപ്പം പരാമർശം 1, 2, 3 ഉത്തരവുകളും നിലനിൽക്കുന്നതാണ് എന്ന് വ്യക്തമാക്കിക്കൊണ്ടും എല്ലാ അധ്യാപക തസ്തികകളും, യോഗ്യത കോഴ്സിന് പ്രവേശനമുള്ള എല്ലാ അംഗപരിമിത വിഭാഗങ്ങൾക്കും (Low vision/Blindness, Hearing impairment, Locomotor disability/cerebral palsy) അനുയോജ്യമാണെന്ന് ഭേദഗതി വരുത്തിക്കൊണ്ടും ഉത്തരവ് പുറപ്പെടുവിക്കുന്നു.

ഓരോ അധ്യാപക തസ്തികയിലേയും യോഗ്യത കോഴ്സിലേയ്ക്ക് ഏതൊക്കെ വിഭാഗം അംഗപരിമിതർക്ക് പ്രവേശനം അനുവദിച്ചിട്ടുണ്ടെന്ന വിഷയം, ടി തസ്തികയിലേയ്ക്ക് നോട്ടീഫിക്കേഷൻ പുറപ്പെടുവിക്കുന്നതിനു മുൻപ് നിയമനാധികാരിയുമായി കൂടിയാലോചിച്ചു പി.എസ്.സി ഉറപ്പുവരുത്തേണ്ടതാണ്.

ഗവർണ്ണറുടെ ഉത്തരവിൻ പ്രകാരം,

ബിജു പ്രഭാകർ
സ്പെഷ്യൽ സെക്രട്ടറി

38. The above order would reveal that as early as 7/5/2019, the Government had issued orders clarifying that the order dated 26.11.2018 referred to as item No. 4 in the above order adding more categories posts which have been identified for the disabled is in addition to the earlier orders by which various posts have been identified. In that view of the matter, there is absolutely no justification on the part of the respondents in contending that they were prevented from inviting applications from the disabled as the posts had not been identified. As a matter of fact, posts had been identified based on which appointments were being regularly carried out in Government Schools.

39. It needs to be mentioned at this juncture that the Government, at the initial stage, had placed on record G.O.(P) No. 19/2020/SJD dated 25.08.2020 to substantiate that the Social Justice Department has identified 49 categories of posts that can be reserved for persons with disabilities and among

them the teachers identified are Teachers (Primary) - Serial No. 6, HSA (Languages and Social Studies) - Serial No. 21, and Craft teacher (Serial No. 27). In view of the Government orders extracted above and particularly G.O.(P) No. 5/19/SJD dated 7/05/2019, it is emphatically clear that the said exercise was not a bona fide one. As can be seen from the Government order dated 7/5/2019, almost all posts had been identified as suitable for teachers in the respective categories.

40. Even if it is taken that the posts were not identified promptly as contended by the petitioners, it would not be of much help to them. It would be apposite to bear in mind that the Apex Court as early as in **Ravi Prakash Gupta** (supra) had repelled the contention of the Central Government and had held that taking such a stand would be contrary to the legislative intent behind the 1995 Act and that the delay in identification of posts under Section 32 cannot be used as a tool to defer or deny the benefit of appointment under Section 33 of the Act to the differently abled persons when a duty is cast on every establishment to make appointment under Section 33 of the Act.

41. In **State of Kerala and Ors. v. Leesamma Joseph**²², one of the

²² [2021 (9) SCC 208]

questions posed before the Apex Court was whether reservation under Section 33 of the 1995 Act is dependent upon identification of posts as stipulated by Section 32. Repelling the said contention, the Apex Court observed as follows in paragraph 21 of the judgment.

II. Whether reservation under Section 33 of the 1995 Act is dependent upon identification of posts as stipulated by Section 32?

21. On a plea of the learned Amicus Curiae, which we unhesitatingly accept, there can be little doubt that it was never the intention of the legislature that the provisions of Section 32 would be used as a tool to frustrate the benefits of reservation under Section 33. In fact, identification of posts for purposes of reservation had to take place immediately after the 1995 Act. A resistance to such reservation is obvious from the delaying tactics adopted by most of the Government authorities in truly implementing the intent. It thus shows that sometimes it is easier to bring a legislation into force but far more difficult to change the social mindset which would endeavour to find ways and means to defeat the intent of the Act enacted and Section 32 was a classic example of the same. In *Union of India v. Ravi Prakash Gupta* [*Union of India v. Ravi Prakash Gupta*, (2010) 7 SCC 626] also, this Court mandated the identification of posts for purposes of reservation. Thus, what is required is identification of posts in every establishment until exempted under proviso to Section 33. No doubt the identification of the posts was a prerequisite to appointment, but then the appointment cannot be frustrated by refusing to comply with the prerequisite. This view was affirmed by a larger Bench of three Judges in *Union of India v. National Federation of the Blind* [*Union of India v. National Federation of the Blind*, (2013) 10

SCC 772] .

In other words, no advantage can be gained by the respondents in contending that they were not in a position to make appointments as the posts had not been identified.

42. I am not impressed with the contention of Sri. George Abraham and Sri. Mohanakannan that a detailed procedure is contemplated in the Act and the Rules with regard to the issuance of disability certificates. They also contend that the failure to set up Special Employment Exchanges by the State would be detrimental to the cause of the disabled and the Managements cannot be directed to issue notification calling for application from PwD. At this juncture, it would be apposite to bear in mind that none of the Managers have a case that they have invited applications from PwD, in spite of Exhibit P1 order dated 18.11.2018. The Hon'ble Supreme Court has time and again observed that the beneficial provisions of the 1995 Act/ 2016 Act would remain on paper and the rights of the PwD would be defeated by the sluggish and obstinate stand taken by the Appropriate Government and the establishments. Instead of being proactive to protect the interests of the disabled, a conscious effort is being taken to thwart their efforts to secure employment by taking an

obstructive or lethargic stand.

43. The respondents have placed on record the data before this Court to show that the vacancies are only in the hundreds even if backlogs are calculated from the year 1996. They contend that by filling up the vacancies which arise from 08.11.2021, the interest of the disabled can be protected without causing heartburn to the others who secured employment. If such a stand is taken, it would be destructive to the interest of PwDs. For instance, the petitioner in W.P.(C) No.17632/2021 is a person with disability. She is a hearing impaired person who has acquired all the requisite qualifications to aspire for the post of Teacher (Hindi) in UP and HS sections. She has been applying before all managements seeking employment in the reservation category for the disabled. None of the management considered her application. In the counter affidavit filed by the 6th respondent-Manager, it is stated that her application which is dated 14.09.2021 was received in the School office only on 20.11.2021 but in the meantime, the Manager appointed another teacher on 15.11.2021 in the light of the impugned Government Order. Though the respondents contend that the petitioner in W.P.(C) No.17632/2021 being a hearing impaired person may not be entitled to secure appointment if she was

made to compete with other disabled, the fact remains that the Manager, while calling for the application, did not invite applications from disabled persons.

44. The contention of the respondents that only a few persons in the State among disabled persons are qualified based on the data obtained from the Employment Exchange also does not appeal to me. There is no requirement for a disabled person who aspires for a teaching post in the aided schools to register himself/herself with the Employment Exchange. None of the Managers have invited applications from the disabled. Even in the report submitted before this Court by the 1st and 2nd respondents that they have stated that the report was prepared hastily and may not reflect the actual picture. The data thus placed before this Court is skewed and no reliance can be placed on the same.

45. I am also not impressed with the contention that only very few disabled persons have acquired the qualification required for the posts. Those are not matters which require consideration in a case of this nature where the materials clearly show that the beneficial provisions of the Statute, the law laid down by the Courts as well as the orders passed by the Government were stifled by the persons and authorities who were bound to protect the interest of PwD's. The right of reservation in employment conferred to the disabled cannot

be taken away by placing stumbling blocks.

46. In **Vikash Kumar v. UPSC**²³, the Hon'ble Supreme Court while pointing out that the enactment of the 1995 Act/2016 Act was the statutory manifestation of a constitutional commitment, observed that Part III of our Constitution does not explicitly include persons with disabilities within its protective fold. However, much like their able-bodied counterparts, the golden triangle of Articles 14, 19 and 21 apply with full force and vigour to the disabled. The 2016 Act seeks to operationalize and give concrete shape to the promise of full and equal citizenship held out by the Constitution to the disabled and to execute its ethos of inclusion and acceptance. It was further held that the fundamental postulate upon which the 2016 Act is based is the principle of equality and non-discrimination. Section 3 of the 2016 Act casts an affirmative obligation on the Government to ensure that persons with disabilities enjoy: (i) the right to equality; (ii) a life with dignity; and (iii) respect for their integrity equally with others. Section 3 is an affirmative declaration of the intent of the legislature that the fundamental postulate of equality and non-discrimination is made available to persons with disabilities without constraining it with the

²³ [(2021) 5 SCC 370]

notion of a benchmark disability. Section 3 is a statutory recognition of the constitutional rights embodied in Articles 14, 19 and 21 among other provisions of Part III of the Constitution. By recognising a statutory right and entitlement on the part of persons who are disabled, Section 3 seeks to implement and facilitate the fulfillment of the constitutional rights of persons with disabilities. Referring to the law laid down in **Jeeja Ghosh v. Union of India**²⁴, it was observed in Paragraph 43 of the judgment that there is a critical qualitative difference between the barriers faced by persons with disabilities and other marginalized groups. In order to enable persons with disabilities to lead a life of equal dignity and worth, it is not enough to mandate that discrimination against them is impermissible. That is necessary, but not sufficient. We must equally ensure, as a society, that we provide them the additional support and facilities that are necessary for them to offset the impact of their disability. It was also observed that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognising the different needs of persons with disabilities, to pave the way for substantive equality. These observations made by the Apex Court are the backbone on which petitioners have set up their case.

²⁴ [(2016) 7 SCC 761]

47. Articles 1 and 7 of the Universal Declaration of Human Rights (1948), reads thus:

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

“All are equal before law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

As is evident from the above, the quintessence of the Universal Declaration of Human Rights is that “ All human beings are born free and equal in dignity and rights”

48. In **Jeeja Ghosh v. Union of India** (supra) the Apex Court while expounding the need for sensitivity towards disabled persons and the true meaning of equality had observed as follows in Paragraph Nos. 37 and 38 of the judgment:

37. The rights that are guaranteed to differently-abled persons under the 1995 Act, are founded on the sound principle of human dignity which is the core value of human right and is treated as a significant facet

of right to life and liberty. Such a right, now treated as human right of the persons who are disabled, has its roots in Article 21 of the Constitution. Jurisprudentially, three types of models for determining the content of the constitutional value of human dignity are recognised. These are: (i) Theological Models, (ii) Philosophical Models, and (iii) Constitutional Models. Legal scholars were called upon to determine the theological basis of human dignity as a constitutional value and as a constitutional right. Philosophers also came out with their views justifying human dignity as core human value. Legal understanding is influenced by theological and philosophical views, though these two are not identical. Aquinas and Kant discussed the jurisprudential aspects of human dignity based on the aforesaid philosophies. Over a period of time, human dignity has found its way through constitutionalism, whether written or unwritten. Even right to equality is interpreted based on the value of human dignity. Insofar as India is concerned, we are not even required to take shelter under theological or philosophical theories. We have a written Constitution which guarantees human rights that are contained in Part III with the caption "Fundamental Rights". One such right enshrined in Article 21 is right to life and liberty. Right to life is given a purposeful meaning by this Court to include right to live with dignity. It is the purposive interpretation which has been adopted by this Court to give a content of the right to human dignity as the fulfilment of the constitutional value enshrined in Article 21. Thus, human dignity is a constitutional value and a constitutional goal. What are the dimensions of constitutional value of human dignity? It is beautifully illustrated by Aharon Barak [Aharon Barak, *Human Dignity — The Constitutional Value and the Constitutional Right* (Cambridge University Press, 2015)] (former Chief Justice of the Supreme Court of Israel) in the following manner:

“The constitutional value of human dignity has a central normative role. Human dignity as a constitutional value is the factor that unites the human rights into one whole. It ensures the normative unity of human rights. This normative unity is expressed in the three ways: first, the value of human dignity serves as a normative basis for constitutional rights set out in the Constitution; second, it serves as an interpretative principle for determining the scope of constitutional rights, including the right to human dignity; third, the value of human dignity has an important role in determining the proportionality of a statute limiting a constitutional right.”

38. All the three goals of human dignity as a constitutional value are expanded by the author in a scholarly manner. Some of the excerpts thereof, are reproduced below which give a glimpse of these goals:

“The first role of human dignity as a constitutional value is expressed in the approach that it comprises the foundation for all of the constitutional rights. Human dignity is the central argument for the existence of human rights. It is the rationale for them all. It is the justification for the existence of rights. According to Christoph Enders, it is the constitutional value that determines that every person has the right to have rights ...

The second role of human dignity as a constitutional value is to provide meaning to the norms of the legal system. According to purposive interpretation, all of the provisions of the Constitution, and particularly all of the rights in the constitutional bill of rights, are interpreted in light of human dignity ...

Lastly, human dignity as a constitutional value influences the development of the common law. Indeed, where common law is recognised, Judges have the duty to develop it, and if necessary, modify it, so that it expresses constitutional values, including the constitutional value of human dignity. To the extent that common law determines rights and duties between individuals, it might limit the human dignity of one individual and protect the human dignity of the other.”

49. In **Rajesh Motibhai Desai v. State of Gujarat and others** (Judgment dated 9/7/2015 in Special Leave Application No. 15735 of 2014, J.B. Pardiwala J., as he then was), had observed as follows in paragraph 32 to 36 of the judgment.

32 The concept of equality enshrined in Article 14 of the Constitution of India itself enjoins duty on the State to bring about a situation where the fundamental rights can be exercised on the footing of equality. Necessarily therefore, a disabled person is entitled to a right to be placed at the level at which he can enjoy the rights. The duty of the State to enact special provisions to enable the disabled persons to exercise their fundamental rights is thus provided in Article 14 itself. In the background of this fundamental right to equality, the directive principle of State policy contained in Article 39A of the Constitution assumes significance. Under that provision, the State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any

other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Therefore, no disability shall deny to any citizen an opportunity to secure justice on the basis of equal opportunity. There is also an important directive principle contained in Article 41 enjoining a duty on the State (within the limits of its economic policy and development) to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want. Thus, much before the progress was made in the international arena, the founding fathers of the Constitution found it necessary to emphasize the duty of the State in Article 41 to make effective provision for securing the right to work, to education and to public assistance in cases of disablement. The concepts of justice social, economic and political, equality of status and of opportunity and of assuring dignity of the individual incorporated in the Preamble, clearly recognize the right of one and all amongst the citizens to these basic essentials designed to flower the citizens' personality to its fullest. After all, an able-bodied person can have many hidden disabilities and an apparently disabled person may have many hidden abilities, and the concept of equality helps both in reaching their highest potential.

33. However, despite all efforts, persons with disabilities are still denied equal opportunities and remain isolated in many of our societies. The rights of individuals with disabilities examine the historical treatments of persons with various disabilities under the law

and the current social, political and legal impact that recent disability rights legislation has had on society as a whole.

34. There are more than 600 million persons with disabilities in the world today. 80% of them live in the developing countries. A staggering 90 million people in India are disabled. That's almost one in every ten.³⁵

35. At least 1.2 million people with disabilities in India are living in households consisting only of people with disability.

36. While the total people with disabilities increased by just over 22 per cent over a decade, from almost 22 million in the Census 2001 to 26.8 million in 2011, the number of people with disabilities living on their own has nearly doubled, jumping by 84 per cent in the same period.

50. As held by the Apex Court in **National Federation of the Blind** (supra), Employment is a key factor in the empowerment and inclusion of people with disabilities. Disabled people are kept out of jobs because of social and practical barriers that prevent them from joining the workforce. Millions of disabled persons are living in poverty and in deplorable conditions and they have been denied the right to make a useful contribution to their own lives and to the lives of their families and community.

51. Having considered the issues raised in all perspectives, I am of the considered opinion that the benefit of reservation as envisaged under the 1995 Act/2016 Act has to be extended to the Persons with Disabilities and no stumbling blocks or limiting clauses can be placed by the respondents so as to infringe their statutory and constitutional rights for reservation to posts in aided schools.

52. In view of the discussion above, this Court holds that the petitioners are entitled to succeed. The following directions are issued while disposing of the writ petitions.

- a) It is declared that the Managers of Aided Schools are bound by G.O.(P) No.18/2018/SJD dated 18.11.2018, and they shall provide 3% reservation of the total number of vacancies in the cadre strength in appointments in Aided Schools to the posts with effect from 07.02.1996 and to fill the backlog from 07.02.1996 to 18.04.2017; and 4% reservation of the total number of vacancies in the cadre strength in appointments in Aided schools with effect from 19.04.2017 in tune with G.O.(P) No. 5/19/SJD dated 7/05/2019 and the orders referred to therein.

- b) Order dated 06.09.2021 vide No. H(2)/19500/2019/D.G.E. issued by the Additional Director General (Ext.P4 in W.P.(C) No.19808/2021) will stand quashed.
- c) G.O.(P) No.19/2021/G.Edn. dated 08.11.2021 (Ext.P5 in W.P.(C) No.19808/2021) and Order dated 07.12.2021 vide No. H(2)/295299/2021/D.G.E. issued by the Additional Director General (Ext.P6 in W.P.(C) No.19808/2021) to the extent that it fixes a cut off date and directs that only vacancies in Aided schools which arise after 08.11.2021 shall be filled up in terms of the 1995 Act/2016 Act will stand quashed.
- d) In terms of G.O.(M.S) No.111/2022/G.Edn. dated 25.06.2022 but without the cutoff date fixed as 08.11.2021, backlog vacancies from 07.04.1996 shall be calculated and the roster shall be prepared within a period of two months from today tabulating the first in 33 vacancies from 07.02.1996 and the first in 25 vacancies from 19.04.2017 onwards for absorbing differently abled in the process of recruitment in Aided Schools in respect of vacancies that have arisen after the date of issuance of G.O.(P) No.18/2018/SJD dated 18.11.2018 as

upheld by this Court in **Renjith** (supra) and in tune with G.O.(P) No. 5/19/SJD dated 7/05/2019 and the previous orders referred to therein.

- e) Appointments already made by the management after the date of issuance G.O.(P) No.18/2018/SJD dated 18.11.2018 in respect of which approval has not been granted by the educational authorities to date shall be subject to the directions above. Only after filling the backlogs as directed above, shall approval be granted in respect of those appointments. Approval of appointments already granted shall not be unsettled.

PS/8/8/2022

Sd/-
RAJA VIJAYARAGHAVAN V,
JUDGE

APPENDIX OF WP(C) 19808/2021

PETITIONER'S EXHIBITS:

- Exhibit P1 TRUE COPY OF THE ORDER ISSUED BY 3RD
RESPONDENT ON 18.11.2018
- Exhibit P2 TRUE COPY OF JUDGMENT OF THIS HON'BLE HIGH
COURT IN WPC. 1806 OF 2019 DATED 26.08.2020.
- Exhibit P3 TRUE COPY OF ORDER NO.GO(MS) 96/2021/HEDN
DATED 15.02.2021
- Exhibit P4 TRUE COPY OF ORDER NO. H(2)/19500/2019/DGE
DATED 06.09.2021 ISSUED BY 2ND RESPONDENT.
- Exhibit P5 TRUE COPY OF THE ORDER NO.GOP 19/2021/GEDN
DATED 08-11-2021 BY 1ST RESPONDENT.
- Exhibit P6 TRUE COPY OF THE ORDER NO.H(2/295299/2021/DGE
DATED 07-12-2021 BY 2ND RESPONDENT.
- Exhibit P7 TRUE COPY OF THE ORDER GO NO.155/16/GEDN DATED
09-09-2016 BY 1ST RESPONDENT.

RESPONDENT EXHIBITS

- Exhibit R1(a) TRUE COPY OF G.O (M.S) No.111/2022 date
25/06/2022 OF THE GENERAL EDUCATION DEPARTMENT
- Exhibit R105(a) TRUE COPY OF G.O.(M.S)NO.111/2022/GEDN.DATED
25.06.2022 ISSUED BY THE 1ST RESPONDENT.

W.P.(C) No.19808/2021 & connected cases :107:

Exhibit R105 (b) TRUE COPY OF LETTER NO.B2/1228/2022 DATED
03.03.2022 OF DISTRICT EDUCATIONAL
OFFICER (DEO), PALA

Exhibit R105 (c) TRUE COPY OF APPOINTMENT ORDER NO.A/174/2021
DATED 13.07.2021 ISSUED BY THE CORPORATE
MANAGER OF PALA DIOCESE CORPORATE EDUCATIONAL
AGENCY TO THE 2ND IMPEADING PETITIONER

Exhibit R105 (d) TRUE COPY OF APPOINTMENT ORDER NO.A/201/2021
DATED 14.07.2021 ISSUED BY THE CORPORATE
MANAGER OF PALA DIOCESE CORPORATE EDUCATIONAL
AGENCY TO THE 3RD IMPEADING PETITIONER

Exhibit R105 (e) TRUE COPY OF APPOINTMENT ORDER NO.A/196/2021
DATED 14.07.2021 ISSUED BY THE CORPORATE
MANAGER OF PALA DIOCESE CORPORATE EDUCATIONAL
AGENCY TO THE 4TH IMPEADING PETITIONER

Exhibit R105 (f) TRUE COPY OF APPOINTMENT ORDER DATED
15.07.2021 ISSUED BY THE MANAGER TO THE 5TH
IMPEADING PETITIONER

APPENDIX OF WP(C) 11673/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE ORDER ISSUED BY 4TH
RESPONDENT ON 18.11.2018
- Exhibit P2 TRUE COPY OF JUDGMENT OF THIS HON'BLE HIGH
COURT IN WPC 1806/2019 DATED 26.8.2020
- Exhibit P3 TRUE COPY OF ORDER NO.H(2/19500/2019/DGE
DATED 6.9.2021 ISSUED BY 2ND RESPONDENT
- Exhibit P4 TRUE COPY OF ORDER NO.GOP 19/2021/GEDN DATED
8.11.2021 BY 1ST RESPONDENT
- Exhibit P5 TRUE COPY OF ORDER NO.H(2/295299/2021/DGE
DATED 7.12.2021 BY 2ND RESPONDENT
- Exhibit P6 TRUE COPY OF ORDER NO.GOP 5/2019/SJD DATED
7.5.2019 BY THE 4TH RESPONDENT
- Exhibit P7 TRUE COPY OF JUDGMENT DATED 16.10.2014 IN WPC
30334/2013 BY THIS HON'BLE COURT
- Exhibit P8 TRUE COPY OF ORDER GO. NO 155/16/GEDN DATED
9.9.2016 BY 1ST RESPONDENT

RESPONDENTS' EXHIBITS:

- EXHIBIT R1(a) TRUE COPY OF G.O(M.S)NO.111/2022 DATED
25.06.2022 OF THE GENERAL EDUCATION
DEPARTMENT

APPENDIX OF WP(C) 17632/2021

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE STANDING DISABILITY ASSESSMENT BOARD CERTIFICATE DATED 25-08-2014 ISSUED BY THE DISTRICT MEDICAL BOARD, GENERAL HOSPITAL, MANJERI MALAPPURAM
- Exhibit P2 TRUE COPY OF THE RASHTRABHASHA PRAVEEN (HINDI) CERTIFICATE DATED 30-03-2010 ISSUED BY THE DAKSHINA BHARAT HINDI PRAJAR SABHA, MADRAS
- Exhibit P3 A TRUE COPY OF THE RASHTRABHASHA VISHARAD (HINDI) CERTIFICATE DATED 01-07-2001 ISSUED BY THE DAKSHINA BHARAT HIND PRAJAR SABHA, MADRAS
- Exhibit P4 A TRUE COPY OF THE CERTIFICATE FOR DIPLOMA IN LANGUAGE EDUCATION (HINDI) DATED 21-10-2016 ISSUED BY THE DEPARTMENT OF EDUCATION, GOVT OF KERALA
- Exhibit P5 THE EXAMINATION RESULT OF CATEGORY IV KERALA TEACHER ELIGIBILITY TEST (K.TET) FEBRUARY, 2020 DATED 30-05-2020 ISSUED TO THE PETITIONER BY THE DEPARTMENT OF GENERAL EDUCATION, GOVT. OF KERALA.
- Exhibit P6 THE EXAMINATION RESULT OF CATEGORY III KERALA TEACHER ELIGIBILITY TEST (K TET) DECEMBER 2020 DATED 17-03-2021 ISSUED TO THE PETITIONER BY THE DEPARTMENT OF GENERAL EDUCATION, GOVT OF KERALA.
- Exhibit P7 A TRUE COPY OF THE G.O(P) NO. 18/2018/SJD DATED 18-11-2018 OF THE SOCIAL JUSTICE (DEPARTMENT) THIRUVANANTHAPURAM.

W.P.(C) No.19808/2021 & connected cases :110:

- Exhibit P8 A TRUE COPY OF THE APPLICATION DATED 14-07-2021
SUBMITTED BY THE PETITIONER TO THE 6TH RESPONDENT
- Exhibit P9 A TRUE COPY OF THE APPLICATION DATED 14-07-2021
SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT
- Exhibit P10 A TRUE COPY OF THE COMMUNICATION DATED 16-08-2021
ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER
- Exhibit P11 TRUE COPY OF THE REPRESENTATION DATED 20-07-2021
SUBMITTED BY THE PETITIONER TO THE HON'BLE CHIEF
MINISTER OF KERALA.
- Exhibit P12 TRUE COPY OF THE REPRESENTATION DATED 25-05-2021
SUBMITTED BY THE PETITIONER TO THE HON'BLE MINISTER
OF EDUCATION.
- Exhibit P13 TRUE COPY OF THE REPRESENTATION DATED 20-07-2021
SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
- Exhibit P14 TRUE COPY OF THE LETTER DATED 24.09.2021 ISSUED BY
THE 6TH RESPONDENT
- Exhibit P15 TRUE COPY OF THE APPLICATION DATED 02/09/2021
SUBMITTED BY THE PETITIONER BEFORE THE MANAGER,
EMEAHSS (UNDER SEETHI HAJI MEMORIAL TRUST, KONDOTTY)
- Exhibit P16 TRUE COPY OF THE APPLICATION DATED 02/09/2021
SUBMITTED BY THE PETITIONER BEFORE THE MANAGER, MSP
HIGH SCHOOL, MALAPPURAM
- Exhibit P17 TRUE COPY OF THE APPLICATION DATED 02/09/2021
SUBMITTED BY THE PETITIONER BEFORE THE MANAGER,
IOHSS, EDVANNA, MALAPPURAM
- Exhibit P18 A TRUE COPY OF THE APPLICATION DATED 06.09.2021
SUBMITTED BY THE PETITIONER UNDER RIGHT TO
INFORMATION ACT 2005 BEFORE THE 6TH RESPONDENT.

- Exhibit P19 A TRUE COPY OF THE REPLY DATED 01.10.2021 ISSUED FROM THE OFFICE OF THE 6TH RESPONDENT TO EXHIBIT P18.
- Exhibit P20 A TRUE COPY OF THE APPLICATION DATED 06.09.2021 SUBMITTED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT, 2005 BEFORE THE 9TH RESPONDENT.
- Exhibit P21 A TRUE COPY OF THE REPLY ISSUED FROM THE OFFICE OF THE 6TH RESPONDENT TO EXHIBIT P20.
- Exhibit P22 A TRUE COPY OF THE APPLICATION DATED 08.09.2021 SUBMITTED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT, 2005 BEFORE THE 7TH RESPONDENT.
- Exhibit P23 A TRUE COPY OF THE APPLICATION DATED 30.01.2022 SUBMITTED BEFORE INFORMATION OFFICER, DISTRICT EDUCATIONAL DEPARTMENT UNDER RIGHT TO INFORMATION ACT, 2005.
- Exhibit P24 A TRUE COPY OF THE REPLY ISSUED FORM THE OFFICE OF THE 10TH RESPONDENT, DISTRICT EDUCATIONAL OFFICER, WANDOOOR TO EXHIBIT P23.
- Exhibit P25 A TRUE COPY OF THE LETTER DATED 03.01.2022 ISSUED FROM THE OFFICE OF THE 8TH RESPONDENT.
- Exhibit P26 A TRUE COPY OF THE ORDER NO.1/HC/IOHS/21 DATED 25.01.2022 ISSUED BY THE 9TH RESPONDENT AFTER CONSIDERING EXHIBIT P17 APPLICATION.
- Exhibit P27 A TRUE COPY OF THE SAID ORDER G.O.(P) NO.19/2021/GEDN DATED 08.11.2021.
- Exhibit P28 A TRUE COPY OF THE ORDER NO.H(2)/295299/2021/DGE DATED 07.12.2021 ISSUED BY THE DIRECTOR OF GENERAL EDUCATION DEPARTMENT.