

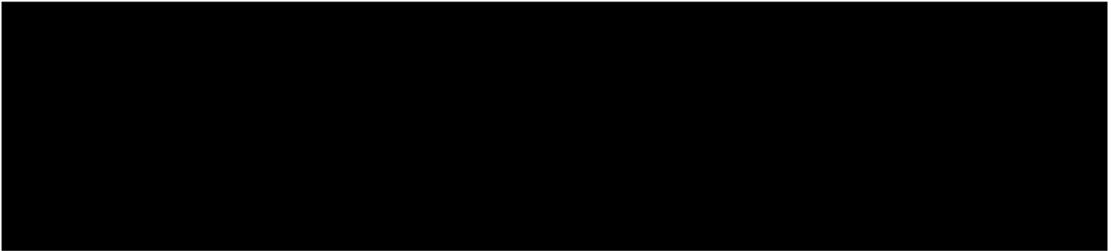


2023/KER/82109

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
TUESDAY, THE 19TH DAY OF DECEMBER 2023 / 28TH AGRAHAYANA, 1945
WP(C) NO. 15496 OF 2023

PETITIONERS:

BIJU SUNDAR



BY ADV BIJU SUNDAR(Party-In-Person)

RESPONDENTS:

- 1 HIGH COURT OF KERALA
REPRESENTED BY THE REGISTRAR GENERAL, ERNAKULAM,
KOCHI, PIN - 682031
- 2 THE REGISTRAR (DISTRICT JUDICIARY)
HIGH COURT OF KERALA, ERNAKULAM, KOCHI, PIN - 682031
- 3 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN -
695001
- 4 THE PRINCIPAL SECRETARY
PERSONNEL AND ADMINISTRATIVE REFORMS DEPARTMENT,
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
BY ADVS.
ELVIN PETER P.J., SC FOR HIGH COURT.

K.R.GANESH(K/000551/1991)
GOURI BALAGOPAL(K/002008/2019)
ABHIJITH.K.ANIRUDHAN(K/1644/2020)
SREELEKSHMI A.S.(K/1313/2021)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“CR”**JUDGMENT**

The petitioner, a resilient individual challenged by a locomotor disability rated at 40% by the Medical Board, is a member of a Scheduled Caste. Undeterred by the hurdles that destiny has unfurled in his path, he has demonstrated remarkable tenacity and academic prowess. After earning his Bachelor of Technology in Electrical and Electronics Engineering from Kerala University, he acquired a Master of Business Administration from the Institute of Management in Kerala. He has also secured LLM Degree from the Law Department at Karyavattom Campus, Thiruvananthapuram. He is presently practicing as an Advocate in the State.

2. The petitioner has approached this Court with a prayer to quash Ext.P1 notification dated 13.4.2023 issued by respondents 1 and 2, as per which applications were invited from qualified candidates for appointment as District and Sessions Judge in the Kerala State Higher Judicial Service by direct recruitment from the bar.

3. The contentions raised by the petitioner can be summarised as under:

- a) While issuing Ext.P1 notification, the respondents omitted to mention the number of vacancies exclusively reserved for Persons

with Disabilities (PwD).

- b) The respondents failed to incorporate provisions for age relaxation as mandated under Section 34 (3) of Act 49 of 2016 for PwDs.
- c) Exts.P4 issued by the Public Service Commission, and Ext.P5 issued by the Government, clearly provide that relaxation of ten years over and above the existing upper age limit is to be granted to PwDs to enable them to compete for the post to which they are considered suitable. No such relaxation has been granted to PwDs.
- d) Reliance is placed on Exts.P8 and P9, and it is stated that 10 years of maximum age relaxation has been granted to disabled persons to the Higher Judiciary Posts in the State of Andhra Pradesh and Odissa. If that be the case, there is no justification in not granting age relaxation in the Kerala Higher Judicial Service.
- e) The respondents, while issuing Ext.P1 notification, have not provided grace marks to PwDs. This also goes against Exhibit P5 and P6 Government Orders, which provide that PwDs are to be granted grace marks subject to a maximum of 10% marks.
- f) Despite the enactment of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and the Right of Persons with Disabilities Act, 2016, respondents 1



and 2, for one reason or the other, till recently, have never reserved a post for persons with disability, which action cannot be countenanced, as it is clearly illegal.

- g) Though the petitioner, on an earlier occasion, had filed W.P.(C) No. 29867 of 2019 challenging the failure on the part of the respondents to identify and reserve posts for PwDs for the appointment of District and Sessions Judge in Kerala Higher Judicial Service, the respondents have not provided provisions for reservation as mandated under Act 49 of 2016.
- h) The petitioner had instituted W.P.(C) No. 22487/2021 challenging the non-reservation of vacancy and non-grant of age relaxation, but the said writ petition was dismissed on the ground that the notification was issued even prior to the identification of the posts.
- i) In Ext.P1 notification, it has been stated that the candidates should qualify for the selection in terms of the Kerala State Higher Judicial Services Rules, 1961. The insistence of the respondents that disabled persons shall secure the very same mark for qualification as open-category candidates is clearly in violation of the provisions of the Act.
- j) The Online Recruitment Portal for the post of District and Sessions

Judge is not disabled-friendly and does not enable a disabled candidate like the petitioner who also falls into the Scheduled Caste category to input the details and get the benefit of the benevolent provisions provided to such candidates.

4. It is essentially on these assertions that this writ petition is filed seeking the following reliefs:

- "a) a writ of mandamus or appropriate writ or direction to the Respondents 1 & 2, to quash the Exhibit-P1 notification and issue a fresh notification providing a vacancy earmarked for the PwD candidates to the post of District and Sessions Judge in Kerala State Higher Judicial Service (K.S.H.J.S) by direct recruitment from the Bar against the Vacancies, so as to allow the petitioner to apply for the examination to the post of District and Sessions Judge in K.S.H.J.S-2023.
- b) Necessary and effective directions may be given to the respondents to include the provisions of RPWD Act 2016 regarding Upper Age Relaxation in the said Exhibit-P1 notification and thereby amending and re-notifying the same with such provisions. c) Necessary and effective directions may be given to the Respondents 1 & 2, to accept the Manual Application of the petitioner to the Post of District and Sessions Judge in Kerala State Higher Judicial Service (K.S.H.J.S), vide Exhibit-P1 notification, as because it was rejected as "over-aged" by the computer in the online portal.
- d) Necessary and effective directions may also be given to the Respondents to include the Grace Marks (10 Marks) to the PwD candidates in the said examination as provided in Exhibit-P5 & 6.
- e) In view of the new Contributory Pension Scheme, necessary and effective directions may also be given to the Respondents to raise



the maximum age to accommodate the rights described under the combined vertical reservation and horizontal reservation of PWD candidates, which is otherwise called as inter-locking reservations, in the said examination.

- f) Necessary and effective directions may also be given to the Respondents 4 & 5 to amend the Kerala State Subordinate and Services Rules (KSSSR), 1958 to include the Upper Age Relaxation of 10 years as mentioned in Exhibit-P4, P5 & P6 to the PWD candidates in the said examination to the post of District and Sessions Judge in K.S.H.J.S-2023.
- g) Necessary and effective directions may be given to the Respondents 4 & 5 to amend the Kerala State Subordinate and Services Rules (KSSSR), 1958 to include the grace marks of 10% as mentioned in Exhibit-P5 & P6 to the PWD candidates in the said examination to the post of District and Sessions Judge in K.S.H.J.S-2023.
- h) Necessary and effective directions may be given to the Respondents 1, 2, & 3 to amend the Kerala State Higher Judicial Service Rules (KSHJSR), 1961 to include the upper age relaxation of 10 years as mentioned in Exhibit-P4, P5, P6 & P10 and the RPWD Act of 2016 to the PWD candidates in the said examination to the post of District and Sessions Judge in K.S.H.J.S-2023.
- i) Necessary and effective directions may be given to the Respondents 1, 2, & 3 to amend the Kerala State Higher Judicial Service Rules (KSHJSR), 1961 to include the grace marks of 10% as mentioned in Exhibit-P5 & P6 to the PWD candidates in the said examination to the post of District and Sessions Judge in K.S.H.J.S-2023.
- j) Necessary and effective directions may also be given to Respondents 4 & 5 to amend the Kerala State Subordinate and Services Rules (KSSSR), 1958 to include the Provision of



Interlocking Reservation with respect to the Upper Age Relaxation of $10 + 5 = 15$ years to the PWD candidates belonging to SC category in the said examination to the post of District and Sessions Judge in K.S.H.J.S-2023.

- k) Necessary and effective directions may be given to the Respondents 1, 2, & 3 to amend the Kerala State Higher Judicial Service Rules (KSHJSR), 1961 to include the Provision of Interlocking Reservation with respect to the Upper Age Relaxation of $10 + 5 = 15$ years to the PWD candidates belonging to SC category in the said examination to the post of District and Sessions Judge in K.S.H.J.S-2023.

5. When the writ petition had come up for admission, by an interim order dated 26.5.2023, this Court directed the respondents to provisionally accept the manual application from the petitioner to the post of District and Sessions Judge in the Kerala State Higher Judicial Service as per Ext.P1 notification.

6. In terms of the directions issued, the petitioner wrote the examination but he was not selected for the Mains examination as he secured +13 marks as is borne out from Ext.P30. The petitioner states that the respondents have not ranked the petitioner as per the reservation policies conferred to persons with disability. It is pointed out that a candidate from the Scheduled Tribe category under Recruitment No. 4/2021 (Roll No.9361) secured -2 marks, and a candidate under Recruitment No.5/2021 under Hindu Nadar category (Roll No. 9446) secured -4 marks.

However, they were selected for the Mains. It is stated that if grace marks were granted to the petitioner recognizing his disability status and if the petitioner was ranked separately under the PwD category, the petitioner would have secured inclusion in the main list.

7. A counter affidavit has been filed by respondents 1 and 2. They have countered the assertions by raising the following contentions:

- a) It is admitted therein that the reservation split up of regular vacancies was not specifically assigned in Ext.P1 notification. However, it is stated that the respondents shall act in terms of Section 34(2) of Act 49 of 2016, and the unfilled vacancies shall be carried forward to the succeeding years.
- b) The State Government has issued a Government Order dated 4.4.2022 identifying the post of District and Sessions Judge for persons with disabilities. The backlog vacancies in the said post are being ascertained, and once it is finalized, the same will be placed before the concerned Committee for appropriate orders.
- c) As per the recommendations of the Administrative Committee, the Full Court has resolved that reservation for PwDs for appointment to the post of District Judge in the Kerala State Higher Judicial Service shall be 4% as provided in Section 34 of the Rights of

Persons with Disabilities Act, 2016. It has been resolved that reservation is limited to such disabled persons who are certified by the Medical Board constituted for assessment that the candidate will be able to perform the duties of the Judicial Officer with the aid of Assistive Technologies and the candidate qualifies for the selection in terms of the Kerala State Higher Judicial Service Rules, 1961 and the scheme of examination framed thereunder.

- d) Insofar as age relaxation is concerned, as per Rule 2(3) of Public Services (Raising of Upper Age Limit for Appointment) Rules, 2014, the maximum upper age limit for direct recruitment to any post shall in no case exceed 50 years in case of widows /widowers who were dependents of Government servant, died in harness. It is further stated that on considering a proposal for age relaxation for persons with disabilities in the Kerala State Higher Judicial Service, the Administrative Committee has resolved to place the matter before another committee, and only after the same is approved by the Government can the same be incorporated in the notification inviting the applications. As per the extant Government orders, age relaxation for direct recruitment for any post shall in no case exceed 50 years.
- e) The petitioner had earlier approached this Court and had filed



W.P.(C) No.22487/2021, and the writ petition was disposed of, holding that since no age relaxation has been granted by the State Government, in consultation with the High Court, the prayer of the petitioner for relaxation of the upper age cannot be accepted. As the issue has been finally decided against the petitioner, the same cannot be raked up again.

8. I have considered the fervent and forceful submissions of Sri. Biju Sundar, who appeared in person, Sri. Elvin Peter, the learned counsel appearing for respondents 1 and 2, and the learned Government Pleader.

9. The records disclose that the main prayer sought by the petitioner is to quash Exhibit-P1 notification and issue a fresh notification providing a vacancy earmarked for the PwD candidates to the post of District and Sessions Judge in Kerala State Higher Judicial Service (K.S.H.J.S) by direct recruitment from the Bar against the vacancies, so as to allow the petitioner to apply for the examination to the post of District and Sessions Judge in K.S.H.J.S-2023. On the strength of an interim order, the petitioner had appeared for the Examination but had failed to secure the marks to write the main examination. In that view of the matter, the 1st prayer has practically become infructuous.



10. The next prayer sought by the petitioner is for age relaxation. Section 34(3) states that the appropriate Government may, by notification, provide for such relaxation of the upper age limit for the employment of persons with benchmark disability as it thinks fit. The Government has issued G.O.(P) No 40/2023/Home dated 25/04/2023, providing for 10 years of age relaxation for persons with disabilities over and above the existing upper age limit for direct recruitment to the post of Munsiff Magistrate. However, insofar as the age relaxation to the post of District Judges is concerned, it is stated that no decision has yet been taken. Act 49 of 2016 was enacted in the year 2016, and the delay on the part of the respondents to give effect to the provisions of the Act and grant age relaxation for PwDs cannot be countenanced. The respondents are bound to take all necessary steps to fix the criteria for age relaxation for persons with disabilities in tune with the statutory provisions. The respondents would do well to bear in mind that Ext.P4 issued by the Public Service Commission says that age relaxation up to 15 years can be granted as regards upper age to blind, hearing impaired, and deaf candidates. Furthermore, Exts.P8 and P9 clearly disclose that the High Court of Judicature at Hyderabad for the State Of Andhra Pradesh And Telangana and the High Court of Odisha have granted ten years of maximum age relaxation to applicants belonging to the Persons with Disabilities category for the post of District and Sessions Judge.



Furthermore, from Ext.P8, information obtained under the Right to Information Act, furnished by the Registrar (Recruitment), High Court of Judicature At Hyderabad for the State Of Andhra Pradesh And Telangana, it is evident that there is no specific rule that prevents the maximum age relaxation from being limited to 50 years for the disabled persons.

11. The petitioner's next grievance is the failure on the part of the respondents to grant grace marks to him. In the notification issued by the respondents, it is stated that PwDs will have to qualify for selection in terms of the Kerala Higher Judicial Service Rules, 1961, and the scheme of examination framed thereunder. The petitioner has placed on record Exhibit P30, Mark List of all the candidates of the Kerala Higher Judicial Service (Preliminary) Examination, and Exhibit P31 list of candidates who have qualified for the examination. The petitioner had scored +13 marks in the preliminary examination of the District & Sessions Judges Examination 2021. However, he was not declared to have been qualified as he was not ranked as per the reservation policies applicable to PwD's. The petitioner's grievance is that if the respondents had ranked the petitioner under the PwD category, then the chances of him qualifying for the mains exam was absolutely certain. I have no doubt in my mind that the grievance expressed by the petitioner is clearly genuine.



12. In **Reserve Bank of India and Others v A.K. Nair and Others**¹ the Apex Court had occasion to observe that if persons with disabilities are denied the rights and privileges conferred by law of equal opportunities, protection of rights and full participation, inter alia, in the field of public employment, the disservice to such persons would inevitably be grave, causing erosion of constitutional idealism and respect for human rights apart from extreme mental agony and pain of the deprived. Where such situations emerge, the courts should not remain mute and dumb. Courts shall not condone the breaches and violations by employers/establishments arising out of treading of the illegal path by them. Paragraph 62 of the judgment reads as under :

62.....The resolve in the Preamble to the Constitution and the provisions in Part IV thereof, are considered relevant. Our preambular promise is to secure 'social justice' to all. The Directive Principles of State Policy, though not enforceable, are declared in Article 37 to be "fundamental in the governance of the country" and the State has a duty to apply these principles in making laws. The immediately next article commands the State to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice - social, economic and political - shall inform all the institutions of the national life and endeavor to eliminate inequalities in status, facilities and opportunities. Article 41 requires the State, within the limits of its economic capacity and development, to make effective provision for securing the right to work, inter alia, in cases of disablement. In the society we live in, which is indeed class-ridden, 'social justice' should mean justice to the weaker and poorer section of the society, particularly when the people of the nation have resolved in the Preamble to secure 'equality of status and opportunity'. The

¹ (2023 SCC OnLine SC 801)



underlying idea is that securing justice to the weaker and the poorer section could make them equal with the rest of the society. In a case where the weaker section is involved in a combat with the stronger section and the scales are even, to rise to the challenge for securing 'social justice', the Courts of law ought to lean in favour of the former so that justice is ensured. If persons with disabilities are denied the rights and privileges conferred by law of equal opportunities, protection of rights and full participation, inter alia, in the field of public employment, the disservice to such persons would inevitably be grave causing erosion of constitutional idealism and respect for human rights apart from extreme mental agony and pain of the deprived. Where such situations emerge, the courts should not remain mute and dumb. No court, far less this Court, should condone the breaches and violations by employers/establishments arising out of treading of the illegal path by them.

13. It is, therefore, high time that the respondents come up with some criteria to give a level playing field for the disabled and fix up relaxed criteria for such a category. By Ext.P5 order dated 29/05/1973 and Ext.P6 order dated 16/01/1978, the Government has granted grace marks subject to a maximum of 10% for candidates in the disabled category. In that view of the matter, the respondents shall fix the stipulation with regard to the grant of grace marks as and when the next notification is issued.

14. The next issue with regard to filling up of backlog vacancies. In the counter affidavit, it has been stated that as per Ext.P10 office memorandum, the guidelines for providing reservation to persons with disabilities, a separate 100-point vacancy based reservation roster shall be maintained for determining/effecting reservation for Persons with



Disabilities. The post of District Judge has been identified as per the order dated 4.4.2022. I find that the Government has come out with the above order after getting a report from the Expert Committee and also functional assessment from the National Institute of Speech and Hearing. In the said order, the following posts have been identified and the criteria has been fixed.

Name of Post	Nature of work	Physical requirements for performing in the post	Categories of disabilities	Details of disabilities which may be considered with disability percentage
District Judge Locomotor disability/ Cerebral Palsy, Locomotor disability Moderate	Deals with Civil and Criminal cases by adopting established procedure both under Civil and Criminal Codes. Records evidence and pass necessary orders/judgments	OL, BA S.ST.M.F.S E.RW.H.C.	Category I	B,LV 40%-100%
			Blindness and Low Vision	
			Category II deaf and Hard of hearing	HI (40-100%) Job Specific Communication assessment as per the Expert Committee meeting minutes 18.12.2021.
			category III Locomotor disability including Cerebral Palsy, Leprosy cured, Dwarfism, Acid Attack Victims	Functional upper extremities Cerebral palsy-Upto GMFCS level 3 (upto 60%) with MACS level-2; Locomotor disability, Leprosy cured, Dwarfism, Acid Attack Victims with the required physical and functional requirements



			Category IV & V	SLD
			Austism, Specific Learning Disability, Intellectual Disability, Mental Illness, Multiple Disability.	Mental Illness 40-60% MD involving above combinations

FUNCTIONAL REQUIREMENT ABBREVIATIONS USED: Bending (BN), Communication (C), Climbing (CL), Crawling (CRL), Hearing (H), Holding (Ho), Jumping (Ju), Kneeling & Crouching (KC), Lifting (L), Movement (M), Manipulation by Fingers (MF), Observing (Watching) (O), Picking (P), Pulling and Pushing (PP), Sitting (S), Standing (ST), Writing (Wr), Reading (R), Walking (W), Seeing (SE), Hearing (H), Holding (Ho), Jumping (J), Kneeling & Crouching (KC)

CATEGORY ABBREVIATIONS USED: B=Blind, LV=Low Vision, D=Deaf, HH= Hard of Hearing, OA=One Arm, OL=One Leg, BA=Both Arms, BL=Both Leg, OAL=One Arm and One Leg, BLOA=Both Leg & One Arm BLA=Both Legs Arms, CP=Cerebral Palsy, LC=Leprosy Cured, Dw=Dwarfism, AAV=Acid Attack Victims, MDy= Muscular Dystrophy, ASD= Autism Spectrum Disorder (M= Mild, MoD= Moderate), ID= Intellectual Disability, SLD= Specific Learning Disability, MI= Mental Illness, MD=Multiple Disabilities

ASSESSMENT ABBREVIATIONS USED: WHODAS-2 = World Health Organisation Disability Assessment Schedule; GMFCS = Gross Motor Function Classification System; MACS = Manual Ability Classification System; ISSA = Indian Scale for Assessment of Autism; VSMS = Vineland Social Maturity Scale Guidelines for the purpose of assessing the extent of specified disability in a person included under the Rights of Persons with Disabilities Act, 2016, No 61, JANUARY 5, 2018 "communication" as given section 1(f) of THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 (NO. 49 OF 2016)

15. In the counter affidavit, it has been stated that the backlog vacancies in the said post are being ascertained, and once it is finalized, the same shall be given effect after being placed before the committee. The

said exercise will have to be carried out expeditiously.

16. A Division Bench of this Court in **Kerala Public Service Commission & Anr. v. E.Dineshan & Ors.**² after considering the law laid by the Apex Court in **Government of India and another v. Ravi Prakash Gupta and another**³ and **Union of India and another v. National Federation of the Blind and others**⁴ had held as under:-

14. In view of the categorical findings of the Apex Court in the aforementioned and other judgments, the question whether reservation available to physically handicapped persons under the Act has to be computed on the basis of the vacancies which arose with effect from 1.1.1996 is no longer res integra. The Act having come into force with effect from 1.1.1996, reservation, which has been held to be not dependent on the identification of the posts would come into operation with effect from the date of the effect of the Act. At best, what can be contended is only that the reservation can be operated by the KPSC only with effect from the dates from which that authority was entrusted with the function of making selections and appointments to the public sector undertakings involved. Even if that be the case, if the vacancies which arose after the KPSC was entrusted with the function of making selections and appointments is considered, all the party respondents would be entitled to succeed in their respective writ petitions. The vacancies earmarked for physically handicapped persons are therefore to be reckoned not with effect from the date of the Government Order identifying the posts or with effect from 1.1.2008, the date on which the Government directed by its clarificatory order that the reservation is to take effect, but with effect from 1.1.1996 or at least with effect from the

² 2016 (2) KHC 910

³ (2010) 7 SCC 626

⁴ (2013) 10 SCC 4816



date when the KPSC was entrusted with the selection and the number of vacancies as well as the quota and the rota available, would be capable of being ascertained.

17. In view of the law laid down by this Court, the respondents are bound to fill up the backlogs backlog of vacancies for the PwDs on the total cadre strength in the identified posts and category and provide 3% reservation of the total number of vacancies in the cadre strength in appointments 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 with effect from 19.04.2017 in terms of the directions issued by this Court in **E. Dineshan** (supra).

18. Before parting, I deem it appropriate to remind the respondents of the directions issued by the Apex Court in the earlier precedents. In paragraph 24 of **Rajeev Kumar Gupta v. Union of India**,⁵ it was observed that a combined reading of Sections 32 and 33 of the 1995 Act explicates a fine and designed balance between the requirements of administration and the imperative to provide greater opportunities to PwD. Therefore, the identification exercise under Section 32 is crucial. Once a post is identified, it means that a PwD is fully capable of discharging the functions associated with the identified post. Once found to be so capable, reservation under Section 33 to an extent of not less than three percent

⁵ (2016) 13 SCC 153



must follow (4% after the coming into force of Act 49 of 2016). Once the post is identified, it must be reserved for PwD irrespective of the mode of recruitment adopted by the State for filling up of the said post.

19. In **Jeeja Ghosh v. Union of India**⁶, it was held as under paragraphs 39 and 43 of the judgment

39. The underlying message in all these provisions is the acknowledgment that human rights are individual and have a definite linkage to human development, both sharing common vision and with a common purpose. Respect for human rights is the root for human development and realisation of full potential of each individual, which in turn leads to the augmentation of human resources with progress of the nation. Empowerment of the people through human development is the aim of human rights

43. All these rights conferred upon such persons send an eloquent message that there is no question of sympathising with such persons and extending them medical or other help. What is to be borne in mind is that they are also human beings and they have to grow as normal persons and are to be extended all facilities in this behalf. The subject of the rights of persons with disabilities should be approached from human rights perspective, which recognised that persons with disabilities were entitled to enjoy the full range of internationally guaranteed rights and freedoms without discrimination on the ground of disability. This creates an obligation on the part of the State to take positive measures to ensure that in reality persons with disabilities get enabled to exercise those rights. There should be insistence on the full measure of general human rights guarantees in the case of persons with disabilities, as well as developing specific

⁶ (2016) 7 SCC 761



instruments that refine and give detailed contextual content of those general guarantees. There should be a full recognition of the fact that persons with disability were integral part of the community, equal in dignity and entitled to enjoy the same human rights and freedoms as others. It is a sad commentary that this perception has not sunk in the mind and souls of those who are not concerned with the enforcement of these rights. The persons suffering from mental or physical disability experience and encounter nonpareil form of discrimination. They are not looked down by people. However, they are not accepted in the mainstream either even when people sympathise with them. Most common, their lives are handicapped by social, cultural and attitudinal barriers which hamper their full participation and enjoyment of equal rights and opportunities. This is the worst form of discrimination which the disabled feel as their grievance is that others do not understand them.

20. Later, in **Vikash Kumar v. UPSC**⁷, the Apex Court had lucidly explained the breadth and contours of 'The Rights of Persons with Disabilities Act, 2016' and opined that it is the statutory manifestation of a constitutional commitment. It was held as follows in Paragraphs 41 to 44 of the judgment as under:-

41. 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 applies with full force and vigour to the disabled. The 2016 RPwD Act seeks to operationalise 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.

42. The fundamental postulate upon which the 2016 RPwD Act

⁷ [(2021) 5 SCC 370]



is based is the principle of equality and non-discrimination. Section 3 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 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 fulfilment of the constitutional rights of persons with disabilities.

43. There is a critical qualitative difference between the barriers faced by persons with disabilities and other marginalised 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. This Court in its judgment in *Jeeja Ghosh v. Union of India* [*Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761] , noted 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. A.K. Sikri, J. stated in the above judgment: (SCC p. 793, para 40)

"40. In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and



freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. *Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation.*" (emphasis supplied)

44. The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. The concept of reasonable accommodation is developed in section (H) below. For the present, suffice it to say that, for a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality—are an obligation as a society—to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination. In this context, it would be apposite to remember R.M. Lodha, J's (as he then was) observation in *Sunanda Bhandare Foundation v. Union of India* [*Sunanda Bhandare Foundation v. Union of India*, (2014) 14 SCC 383]; *Disabled Rights Group v. Union of India*, (2018) 2 SCC 397], where he stated : (SCC p. 387, para 9)

"9. ... 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.”

Sadly, it does not appear that the respondents have diligently complied with the constitutional commitments to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination. The above omission will have to be rectified.

21. In view of the discussion above, this writ petition is ordered as under:-

- A. The prayer for quashing Exhibit P1 notification is rejected as the said prayer has become infructuous.
- B. The respondents shall act strictly in tune with the provisions of Section 34 of Act 49 of 2016 and work out the backlog of vacancies for the PwDs on the total cadre strength in the identified posts and category, and provide 3% reservation of the total number of vacancies in the cadre strength in appointments 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 with effect from 19.04.2017.
- C. The respondents shall simultaneously initiate all measures to fix the criteria for age relaxation for persons with disabilities in tune with



the Statutory Provisions and Government orders governing the subject and also consider granting grace marks to PwDs to operationalise 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.

- D. The above exercise, as ordered above, shall also be carried out and completed within three months from the date of receipt of a copy of this judgment.
- E. The respondents shall thereafter initiate a special recruitment drive to fill up the vacancies in tune with the statutory mandate after carrying out the exercise as ordered above.

sd/-

RAJA VIJAYARAGHAVAN V
JUDGE

PS/17/12/2023

**APPENDIX OF WP(C) 15496/2023**

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE NOTIFICATION OF KERALA STATE HIGHER JUDICIAL SERVICE EXAMINATION (K.S.H.J.S) 2023 VIDE NOTIFICATION NO: HCKL/2658/2023-REC4 DATED 13.04.2023
- Exhibit P2 THE TRUE COPY OF THE LL. B DEGREE CERTIFICATE DATED 04/06/2010 ISSUED FROM THE UNIVERSITY OF KERALA TO THE PETITIONER
- Exhibit P3 TRUE COPY OF THE ENROLMENT CERTIFICATE DATED 07/02/2010 OF THE PETITIONER
- Exhibit P4 TRUE COPY OF THE REPLY TO RTI ACT FROM THE KERALA PUBLIC SERVICE COMMISSION (K.P.S.C) NO: IDS I(4) 974/2012/GW DATED 24.01.2012
- Exhibit P5 TRUE COPY OF THE KERALA GOVERNMENT ORDER G.O(P) NO:158/73/PD DATED 29/05/1973
- Exhibit P6 TRUE COPY OF THE KERALA GOVERNMENT ORDER G.O. MS. NO:30/78/GAD DATED 16/01/1978
- Exhibit P7 THE RELEVANT PAGES OF THE ANDHRA PRADESH STATE AND SUBORDINATE SERVICE RULES 1996
- Exhibit P8 TRUE COPY OF THE RIGHT TO INFORMATION ACT REPLY VIDE NO: ROC NO.595&596/PIO/JUDL/2022 DATED 09.02.2023
- Exhibit P9 TRUE COPY OF THE RTI REPLY OF THE SPIO OF THE HIGH COURT OF ORISSA, CUTTAK VIDE NO: RTI-172/2022/1589 DATED 27.01.2023
- Exhibit P10 TRUE COPY OF THE OFFICE MEMORANDUM DATED 15TH JANUARY 2018 ISSUED BY GOVT: OF INDIA MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS, DEPARTMENT OF PERSONNEL AND TRAINING
- Exhibit P11 TRUE COPY OF THE DEGREE CERTIFICATE OF THE PETITIONER FOR B.TECH IN ELECTRICAL &



ELECTRONICS ENGINEERING FROM GOVT: COLLEGE OF ENGINEERING, TRIVANDRUM, UNDER THE KERALA UNIVERSITY

- Exhibit P12 TRUE COPY OF THE DEGREE CERTIFICATE OF PETITIONER FOR M.B.A DEGREE COURSE FROM INSTITUTE OF MANAGEMENT IN KERALA, UNDER THE KERALA UNIVERSITY
- Exhibit P13 TRUE COPY OF THE CERTIFICATE OF THE PETITIONER FOR L.L.M DEGREE COURSE FROM THE LAW DEPARTMENT, KARIAVATTOM CAMPUS, TRIVANDRUM, UNDER THE KERALA UNIVERSITY
- Exhibit P14 TRUE COPY OF THE STANDING DISABILITY ASSESSMENT BOARD CERTIFICATE ISSUED BY THE DISTRICT MEDICAL OFFICER, THIRUVANANTHAPURAM WITH NO:13800/2016/DMOH DATED 07/10/2016
- Exhibit P15 TRUE COPY OF THE PASS CERTIFICATE ISSUED BY CENTRAL BOARD OF SECONDARY EDUCATION, VIDE NO:0004933 DATED 15/07/1985 OF THE PETITIONER
- Exhibit P16 TRUE COPY OF THE GOVT: ORDER G.O(P) NO:149/2013 FIN DATED 03/04/2013
- Exhibit P17 TRUE COPY OF THE THE NATIONAL PENSION SCHEME
- Exhibit P18 TRUE COPY OF THE NOTIFICATION OF KERALA STATE HIGHER JUDICIAL SERVICE EXAMINATION - 2017 FOR THE POST DISTRICT AND SESSIONS JUDGES
- Exhibit P19 TRUE COPY OF THE NOTIFICATION OF KERALA STATE HIGHER JUDICIAL SERVICE EXAMINATION - 2019 FOR THE POST DISTRICT AND SESSIONS JUDGES
- Exhibit P20 TRUE COPY OF THE JUDGMENT IN WP (C) NO: 28552 OF 2019 DATED 26-10-2019
- Exhibit P21 TRUE COPY OF THE NOTIFICATION VIDE NO: REC-4-38134/2021 OF KERALA STATE HIGHER JUDICIAL SERVICE (K.S.H.J.S) 2021 DATED 01.10.2021
- Exhibit P22 TRUE COPY OF THE JUDGMENT IN W.P(C) NO:



- 22487/2021 DATED 02/09/2022
- Exhibit P23 TRUE COPY OF THE KERALA STATE HIGHER JUDICIAL SERVICES RULES, 1961.
- Exhibit P24 TRUE COPY OF THE COMPUTER PRINTOUT OF THE STATUS OF REJECTED THE PETITIONER'S APPLICATION IN RECRUITMENT PORTAL OF THE HIGH COURT OF KERALA
- Exhibit P25 TRUE COPY OF THE SAMPLE APPLICATION FORM' PUBLISHED IN THE ONLINE RECRUITMENT PORTAL FOR THE POST OF DISTRICT & SESSIONS JUDGE
- Exhibit P26 TRUE COPY OF THE COMMUNITY CERTIFICATE ISSUED BY THE TAHASILDAR THIRUVANANTHAPURAM WITH NO:76795232 DATED 17/03/2023
- Exhibit P27 TRUE COPY OF THE INTERIM ORDER DATED 21.10.2021 IN WPC 22487/2021
- Exhibit P28 TRUE COPY OF THE CASE HISTORY OF WPC 22487/2021
- Exhibit P29 THE COPY OF THE NOTIFICATION HCKL/2658/2023-REC4 DATED 26.7.2023
- Exhibit P30 THE COPY OF THE SAID MARK LIST OF ALL CANDIDATES OF KSHJS (PRELIMINARY) EXAMINATION - 2021, PUBLISHED BY THE RESPONDENTS
- Exhibit P31 THE TRUE COPY OF THE SAID NOTIFICATION NO: REC4-38134/2021 DATED 06-04-2022