

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. 27911 OF 2023

PETITIONER:

GEORGE MATHEW

BY ADVS.
GEORGE VARGHESE (PERUMPALLIKUTTIYIL)
MANU SRINATH
NIMESH THOMAS
SREELAKSHMI R.NAIR

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT IN
THE DEPARTMENT OF TAXES (EXCISE), GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 2 THE KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY, PATTOM,
THIRUVANANTHAPURAM, PIN - 695001
- 3 SECRETARY
KERALA PUBLIC SERVICE COMMISSION, PATTOM,
THIRUVANANTHAPURAM, PIN - 695001
- 4 KERALA STATE BEVERAGES (MANUFACTURING AND
MARKETING) CORPORATION LIMITED
REPRESENTED BY ITS MANAGING DIRECTOR, BEVCO

TOWER, VIKAS BHAVAN P.O., PALAYAM,
THIRUVANANTHAPURAM, PIN - 695033

BY ADV P.C SASIDHARAN

OTHER PRESENT:

SRI. NAVEEN T, SC FOR KERALA STATE BEVERAGES
CORPORATION

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 is a person suffering from Locomotor disability assessed as 70%. He has approached this Court, being aggrieved by the refusal on the part of the 3rd respondent in advising the petitioner towards the post of Computer Programmer cum Operator against the 4% quota earmarked for persons with disabilities as provided under the Rights of Persons with Disabilities Act, 2016 (Act 49 of 2016).

2. Short facts are as under:

- a. The petitioner responded to Ext.P2 selection notification dated 15.11.2013 issued by the Kerala Public Service Commission (PSC) for selection to the post of Computer Programmer-cum-Operator in the Kerala State Beverages (Manufacturing and Marketing) Corporation Ltd. [“The Corporation” for the sake of brevity]. After due process of selection, despite the fact that the petitioner is shown as a person with disability in Ext.P3 Short-list, when Ext.P5 ranked list was issued, he was shown as Rank No. 56. No weightage was given to him nor was he considered for entitlement in terms of the benevolent

provisions of Act 49 of 2016. In the said circumstances, he approached this Court and filed W.P.(C) No. 22650/2019. During the pendency of the writ petition, the Government passed Ext.P9 order identifying the post of Computer Programmer cum Operator as suitable for reservation under Act 49 of 2016. Taking note of the above aspect, this Court, by Ext.P10 judgment, ordered as under:

2. One post has been identified and reported to the PSC. However, there was a direction of this court dated 6/12/2019 that the respondents should not make any advice for appointment against one vacancy of computer programmer cum operator, in the general category. This order was extended from time to time. Evidently, one vacancy is now kept apart for the petitioner. The 4th respondent shall report this vacancy to the PSC. Hence, there will be a direction to the second respondent-PSC to forthwith issue advice memo as against one post now set apart for the petitioner. According to the petitioner, total number of four vacancies are available to the PwD candidates. Without making any observation on that, petitioner shall be placed in appropriate place in accordance with law.

b) The PSC took up the matter in appeal. It was contended that going by the stipulations, the claim of the petitioner, who is suffering from a locomotor disability, could be considered only in

sub-category III after exhausting the claims of sub-category I (visually impaired candidates) and sub-category II (hearing impaired candidates).

- (c) The Division Bench by Ext.P11 judgment declared that the effect of the Government Order dated 27.9.2021 identifying the post of Computer Programmer cum Operator would relate back to the commencement of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and Act 49 of 2016 and therefore, for the purpose of filling the backlog vacancies, there is no necessity for a Special Recruitment and the pending ranked list could be utilized appropriately as against the vacancies reported. The Division Bench proceeded to observe as under:

14. In view of the indisputable legal position, we have already declared that the effect of the present Government Orders in identifying the suitability of the posts is that the same would relate back to the commencement of the Act. It has also been held by the decisions of this Court as in Kerala Public Service Commission & Anr. v. E.Dineshan & Ors. [2016 (2) KHC 910] that for the purpose of backlog vacancies, there

is no necessity for a special recruitment and the pending ranked list could be utilized appropriately as against the vacancies reported. Hence, it is ordered that the competent authority of the PSC will take immediate steps to prepare a special rank list of physically disabled candidates from amongst the candidates considered for the selection process covered by Ext.P-2 selection notification and Ext.P-5 ranked list, and if any of the turns of physically disabled candidates like Turn Nos. 1, 34 & 66 have already been bypassed, then the same should be recouped as against the next available vacancy without any further delay by advising such suitable candidates. Till a decision is taken by the PSC on abovesaid aspects, the pending reported vacancy in question shall not be utilized for advice.

15. The issue as to whether in case candidates belonging to Sub Categories I & II are not available in the present zone of consideration, then as to whether Sub category III candidates could be straightaway considered, etc are left open to be raised and decided at the appropriate stage in the manner known to law. All what we would direct now is that after the preparation of special rank list of physically disabled candidates as above, the PSC should take necessary steps to implement the mandate contained in the provision contained in the Central Act, 2016, more particularly Sec.34 thereof, and in the light of the dictum settled by the Apex Court and by the Division Bench of this Court in that regard. The PSC will intimate the above decision so taken by them to the writ petitioner.

- (d) It was held that if any of the turns of physically disabled candidates like Turn Nos. 1, 34 and 66 have already been bypassed, the same shall be recouped as against the next available vacancy without any further delay by advising such candidates. The PSC was directed that the pending reported vacancy shall not be utilized for advice. In order to enable the petitioner to know the details of backlog vacancies, the Corporation was directed to inform the petitioner of the factual details regarding the creation of the post of Computer Programmer Cum Operator and the details of the regular appointments made to the post since its inception.
- (e) In terms of the directions issued, Ext.P12 letter was issued by the Corporation that a total number of 83 appointments have been made since 7.3.2013 over two separate recruitment ranked lists. The first list is dated 25.1.2013, which led to 45 appointments, and the next on 3.7.2019, which led to 38 appointments.
- (f) Later, pursuant to the initiation of contempt proceedings, Ext.P14 addendum notification was issued, whereby a special ranked list of differently abled candidates was drawn up, and the petitioner's

name was included as Rank No. 1.

- (g) However, immediately thereafter, PSC published an appointment chart wherein it has been stated that since there are no candidates available in Category I - DA - LV (Disabled Low Vision), the vacancy cannot be filled up from any other category of disabled persons. It is also stated therein that the vacancy has been set apart to be filled from the next ranked list.
- (h) The petitioner asserts that the stand taken by the PSC is illegal. According to him, the lateral reservation under the Act will relate back to the commencement of the Act and the issue of backlog of arrears were to be addressed.
- (i) The petitioner contends that for the post of Computer Programmer cum Operator, 83 appointments have been made, as is evident from Ext.P12 communication. As ordered by the Division Bench, the roster points of 1, 26, 51, and 76 reserved for disabled persons have been bypassed, the said vacancies have to be recouped for selection and appointment in terms of Section 34(1) r/w Section

34(2) of Act 49 of 2016.

- (j) It is stated that the petitioner is the only person with physical disability in terms of Ext.P14 revised ranked list, and he is entitled to be appointed against the next arising vacancy earmarked for persons with disability. As is evident from Ext.P16 to 18 appointment charts and Ext.P14 communication, the turn of Low Vision and hearing-impaired candidates is already over, and now the roster turn is for advice for a candidate belonging to Locomotor disability/Cerebral Palsy. It is on these assertions that this writ petition is filed seeking the following reliefs:

- i) declare that the petitioner is entitled to be appointed as Computer Programmer cum Operator in the 4th respondent against the 4% quota earmarked for persons with disabilities as provided under the Right of Persons with Disabilities Act, 2016, in the one unfilled vacancy specified in Ext.P16 Chart published in furtherance of Ext.P2 notification;
- ii) issue a writ in the nature of certiorari or any other writ, direction or order quashing Ext. P16 issued by the 2nd Respondent PSC to the extent that the vacancy therein has been decided to be set apart to the selection process from the next Ranked List for appointment of a candidate belonging to DA-LV Category;

- iii) issue a writ in the nature of mandamus or any other writ, direction or order directing the 2nd Respondent PSC to advise the petitioner towards the post of Computer Programmer cum Operator in the 4th respondent against the seat set apart for persons with disability in Ext.P16 Chart;
- iv) issue a writ in the nature of mandamus or any other writ, direction or order directing the 4th Respondent Corporation to appoint the petitioner towards the post of Computer Programmer cum Operator in the 4th respondent forthwith, as soon as the 2nd Respondent issues an advice in this regard;

3. A counter affidavit has been filed by respondents 2 and 3. After narrating the factual aspects, it is stated that the Government, by G.O.(P) No. 12/19/SJD dated 31.10.2019, enhanced the reservation for the disabled from 3% to 4% in tune with the provisions of the Act 49 of 2016 and directions were issued to allocate 1, 26, 51 and 76 turns in a roster of 100 points to disabled candidates. The rank list for the post has expired on 2.7.2022 and all substantive vacancies received within the validity period have been advised. It is stated that in terms of the provisions of Act 49 of 2016, whenever a vacancy arises in a turn earmarked for a particular category of disabled, and there is no candidate available on the ranked list for accommodation against the said vacancy, the vacancy has to be carried

forward to the next selection and only in the event of the candidates of that category not being available at the next selection can the post be interchanged with candidate of other disability. It is stated that the setting apart of disabled - Low Vision turn and vacancy due to the non-availability of candidates under low vision in the current ranked list is proper in the light of Act of 1995 and Act 49 of 2016.

4. I have considered the submissions of Sri. George Varghese Perumpallikuttiyil, Sri. P.C. Sasidharan, the learned standing counsel appearing for the PSC and Sri. Naveen, the learned standing counsel appearing for the Corporation.

5. I have already detailed the entire factual aspects.

6. It is evident from the facts narrated above that the Commission, while issuing Ext.P16 order, has taken a decision that since no candidates are available in the DA-LV category, the said vacancy can only be utilized for appointing a candidate belonging to the DA-LV category.

7. In this context, it would be worthwhile to remember that the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995 (Act No.1 of 1996) mandated that at least 3% reservation has to be ensured in appointments to the vacancies arising for direct recruitment in the cadre strength of every establishment. The Apex Court in **Union of India and Another v. National Federation of the Blind and Others** (2013 (10) SCC 772) directed the appropriate Governments 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 the date of judgment and implement the same without fail.

8. It would be apposite at this juncture to refer the Sections 32 and 33 of Act 1 of 1996, which reads as under:

32. Identification of posts which can be reserved for persons with disabilities.—Appropriate Governments shall— (a) identify posts, in the establishments, which can be reserved for the persons with disability; (b) at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.

33. Reservation of posts.—Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent. each shall be reserved for persons suffering from— (i) blindness or low vision; (ii) hearing impairment; (iii) locomotor disability or cerebral palsy, in the posts identified for each disability: Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be

specified in such notification, exempt any establishment from the provisions of this section.

9. It was the duty of the appropriate Government to identify the posts that can be reserved for persons with disabilities and appoint them in every establishment, such percentage of vacancies not less than three percent for persons or class of persons with disability of each category. Such an exercise has not been carried out in the instant case. As held by the Apex Court in **Union of India v. Ravi Prakash Gupta**, [(2010 (7) SCC 626)], if the contention that the provisions of Section 33 of the Disabilities Act, 1995, could be applied only after the identification of posts suitable for such appointment under Section 32 thereof is accepted, it would run counter to the legislative intent with which the Act was enacted. To accept such submission would amount to accepting a situation where the provisions of Section 33 of the 1995 Act could be kept deferred indefinitely by bureaucratic inaction. 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. In view of the coming into force of

Act 49 of 2016, the appropriate Government is legally bound to appoint in every Government establishment not less than four percent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities.

10. In the instant case, the Division Bench had occasion to consider the entire aspects. It was held that by the issuance of Government Order dated 27.9.2021 as corrected by Government Order dated 21.12.2021, the identification of the post of Computer Programmer cum Operator as suitable for lateral reservation will relate back from the date of commencement of the Act and all the five sub-categories mentioned in the schedule to the Government Order will have to be treated as identified as suitable for such lateral reservation under the Central Act. This Court in **Kerala Public Service Commission & Anr. v. E.Dineshan & Ors.** [2016 (2) KHC 910] has held that for the purpose of backlog vacancies, there is no necessity for a special recruitment, and the pending ranked list could be utilized appropriately as against the vacancies reported. In view of the above pronouncement, it was held by the Division Bench that PSC shall take immediate steps to prepare a special rank list of physically

disabled candidates from amongst the candidates considered for the selection process covered by Ext.P2 selection notification and Ext.P5 ranked list, and if any of the turns of physically disabled candidates like Turn Nos. 1, 34 & 66 have already been bypassed, then the same should be recouped as against the next available vacancy without any further delay by advising such suitable candidates. (emphasis supplied)

11. As directed by the Division Bench, the Corporation has issued Ext.P12 detailing the creation of the post "Computer Programmer cum Operator" and the regular appointments which have been made since the inception. In Ext.P12, it has been stated that a total of 83 appointments have been made since 7.3.2013 onwards. There is no case for the respondents that any disabled candidate has ever been appointed to the post of Computer Programmer cum Operator in the Corporation. It is also not disputed that as per the provisions of the Act and the orders issued by the Government, the roster points of 1, 26, 51, and 76 have been reserved for persons with disability.

12. Ext.P16 to P18 appointment charts placed before this Court read along with Ext.P14 communication would make it absolutely clear that

the turns of low vision and hearing impaired categories are already over, and the next roster turn is for advice for a candidate belonging to locomotor disability/cerebral palsy. In that view of the matter, the stand taken by the PSC in Ext.P16, that since no candidate is available in the low vision category, the vacancy has to be set apart to be filled from the next ranked list cannot be accepted.

13. It would be apposite at this juncture to refer to Section 34 of Act 49 of 2016, which reads as follows:

34. Reservation.—(1) 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 percent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one percent for persons with benchmark disabilities under clauses (d) and (e), namely:—

- (a) blindness and low vision;
- (b) deaf and hard of hearing;
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

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

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

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is

such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

14. In this context, it would be instructive to refer to the office memorandum dated 15.1.2018 issued by the Ministry of Personnel, Public Grievances and Pension of the Government of India explaining the manner and mode in which reservations for the disabled have to be effected.

7. EFFECTING RESERVATION - MAINTENANCE OF ROSTERS:

7.1 Every Government establishment shall maintain group-wise a separate vacancy based 100 point vacancy based reservation roster register in the format given in Annexure for determining/effecting reservation for the Persons with Benchmark Disabilities - one each for Group 'A' posts filled by direct recruitment, Group 'B' posts filled by direct recruitment and Group 'C' posts filled by direct recruitment.

7.2 Each register shall have cycles of 100 points and each cycle of 100 points shall be divided into four blocks, comprising the following points:

1st Block - point No. 01 to point No. 25

2nd Block - point No. 26 to point No. 50

3rd Block - point No. 51 to point No. 75

4th Block — point No. 76 to point No.100

7.3 Points 1, 26, 51 and 76 of the roster shall be earmarked for persons with benchmark disabilities - one point each for four respective categories of disabilities. The Head of the establishment shall ensure that vacancies identified at SI. No.1, 26, 51 and 76 are earmarked for the respective categories of the persons with benchmark disabilities. However, the Head of the establishment shall decide the placement of the selected candidate in the roster register.

7.4 All the vacancies arising irrespective of vacancies reserved for Persons with Benchmark Disabilities shall be entered in the relevant roster. If the vacancy falling at point no. 1 is not identified for the Person with Benchmark Disability or the Head of the establishment considers it desirable not to fill it up by Persons with Benchmark Disabilities or it is not possible to fill up that post by the Persons with Benchmark Disabilities for any other reason, one of the vacancies falling at any of the points from 2 to 25 shall be treated as reserved for the person with benchmark disability and filled as such.

7.5 Likewise, a vacancy falling at any of the points from 26 to 50 or from 51 to 75 or from 76 to 100 shall have to be filled by the Persons with Benchmark Disabilities. The purpose of keeping points 1, 26, 51 and 76 as reserved is to fill up the first available suitable vacancy.

7.6 There is a possibility that none of the vacancies from 1 to 25 is suitable for any category of the person with benchmark

disability. In that case two vacancies from 26 to 50 shall be filled as reserved for persons with benchmark disabilities. If the vacancies from 26 to 50 are also not suitable for any category, three vacancies shall be filled as reserved from the third block containing points from 51 to 75. This means that if no vacancy can be reserved in a particular block, it shall be carried over into the next block

7.7 After all the 100 points of the roster are covered, a fresh cycle of 100 points shall start.

7.8 If the number of vacancies in a year is such as to cover only one block (say 25 vacancies) or two (say 50 vacancies), the category of the persons with benchmark disabilities should be accommodated as per the roster points. However, in case, the said vacancy is not identified for the respective category, the Head of the establishment shall decide the category on the basis of the nature of the post, the level of representation of the specific disabled category in the concerned grade/post etc.

8. INTER SE EXCHANGE AND CARRY FORWARD OF RESERVATION IN CASE OF DIRECT RECRUITMENT:

8.1 Where in any recruitment year any vacancy cannot be filled up due to non availability of a suitable person with benchmark disability or for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange

among the following four categories of disabilities, at one percent each to each category:

(A)

(a) blindness and low vision;

(B)

(b) deaf and hard of hearing;

(C)

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(D)

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to

(d) including deaf-blindness,

8.2 Only when there is no person with benchmark disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with benchmark disability.

8.3 If the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged with the prior approval of Department of Empowerment of Persons with Disabilities, among the above mentioned four categories.

8.4 If any vacancy reserved for any category of benchmark disability cannot be filled due to non-availability of a suitable person with that benchmark disability or, for any other sufficient reason, such vacancy shall be carried forward as a 'backlog

reserved vacancy' to the subsequent recruitment year.

8.5 In the subsequent recruitment year the 'backlog reserved vacancy' shall be treated as reserved for the category of disability for which it was kept reserved in the initial year of recruitment. However, if a suitable person with that benchmark disability is not available, it may be filled by interchange among the categories of benchmark disabilities identified for reservation. In case no suitable person with benchmark disability is available for filling up the vacancy in the succeeding year also, the employer may fill up the vacancy by a person other than a person with benchmark disability. If the vacancy is filled by a person with benchmark disability of the category for which it was reserved or by a person of other category of benchmark disability by inter se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation. But if the vacancy is filled by a person other than a person with benchmark disability in the subsequent recruitment year, reservation shall be carried forward for a further period upto two recruitment years whereafter the reservation shall lapse. In these two subsequent years, if situation so arises, the procedure for filling up the reserved vacancy shall be the same as followed in the first subsequent recruitment year.

8.6 The Government establishment shall interchange vacancies only if due process of recruitment viz. proper advertisement of vacancy to fill up the vacancies reserved for persons with benchmark disabilities has been complied with.

8.7 In order to ensure that cases of lapse of reservation are

kept to the minimum, any recruitment of the persons with benchmark disabilities candidates shall first be counted against the additional quota brought forward from previous years, if any, in their chronological order. If candidates are not available for all the vacancies, the older carried forward reservation would be filled first and the current vacancies would be carried forward if not filled up provided that in every recruitment, the number of vacancies reserved for Persons with Benchmark Disabilities including carried forward vacancies will be announced beforehand, for the information of all aspirants.

9. HORIZONTALITY OF RESERVATION FOR PERSONS WITH BENCHMARK DISABILITIES:

9.1 Reservation for backward classes of citizens (SCs, STs and OBCs) is called vertical reservation and the reservation for categories such as persons with benchmark disabilities and ex-servicemen is called horizontal reservation. Horizontal reservation cuts across vertical reservation (in what is called interlocking reservation) and persons selected against the quota for persons with benchmark disabilities have to be placed in the appropriate category viz. SC/ST/OBC/Unreserved depending upon the category to which they belong in the roster meant for reservation of SCs/STs/OBCs. To illustrate, if in a given year there are two vacancies reserved for the persons with benchmark disabilities and out of two persons with benchmark disabilities appointed, one belongs to Scheduled Caste and the other belongs to Unreserved category, then the SC candidate with benchmark disability shall be adjusted against the SC point in the reservation roster and the Unreserved candidate with benchmark disability

against unreserved point in the relevant reservation roster. In case none of the vacancies falls on point reserved for the SCs, the candidate under benchmark disability belonging to SC shall be adjusted in future against the next available vacancy reserved for SCs.

9.2 Since the persons with benchmark disabilities have to be placed in the appropriate category viz. SC/ST/OBC/Unreserved in the roster meant for reservation of SCs/STs/OBCs, the application form for the post should require the candidates applying under the quota reserved for persons with benchmark disabilities to indicate whether they belong to SC/S T/OBC or Unreserved. Thus, reservation for persons with benchmark disabilities is horizontal.

15. In the present case, it is evident from Ext.P12 that a total of 83 appointments have already been made since 7.3.2013 over two separate recruitment ranked lists. The first list is dated 25.1.2013, which led to 45 appointments, and the next on 3.7.2019, which led to 38 appointments. The vacancies corresponding to Roster points No. 1 and 26 were specifically designated for individuals with benchmark disabilities, specifically a) blindness and low vision and b) deaf and hard of hearing, respectively. However, individuals falling under Category -I and II, as specified, were not available for these positions, as is evident from Exts.P16 to P18.

16. It is essential to reiterate that if any vacancy reserved for a particular category of benchmark disability cannot be filled due to the unavailability of a suitable candidate with that specific benchmark disability or for any other valid reason, such a vacancy must be carried forward as a 'backlog reserved vacancy' to the subsequent recruitment year. The respondents are obligated to undertake this procedure in the forthcoming recruitment year. The respondents will have to ensure that in the subsequent recruitment year, the 'backlog reserved vacancy' should be treated as reserved for the category of Disability as stipulated under Section 34(1) (a) and (b) as it was originally reserved in the initial year of recruitment. If a suitable candidate with that benchmark disability is still unavailable in the subsequent year, the vacancy may be filled through interchange among the categories of benchmark disabilities designated for reservation. In the event that no suitable candidate with a benchmark disability can be found to fill the vacancy in the succeeding year as well, the employer may proceed to fill the vacancy with a person other than an individual with a benchmark disability. If the vacancy is filled by a person with a benchmark disability of the category for which it was originally

reserved or by a person from other benchmark disability categories through inter se exchange in the subsequent recruitment year, it shall be deemed to have been filled through reservation. However, if the vacancy is filled by a person other than an individual with a benchmark disability in the subsequent recruitment year, the reservation shall be extended for up to two additional recruitment years, following which the reservation shall cease. During these two subsequent years, if the situation arises, the procedure for filling the reserved vacancy shall remain consistent with the process employed during the first subsequent recruitment year. As stated earlier, in the case at hand, the Corporation has already appointed a total of 83 persons. One remaining vacancy that was kept unfilled due to orders issued by this Court ought to have been filled, and advice has been issued to the petitioner, who stands as the sole eligible candidate.

17. The vacancies corresponding to Roster Nos. 51 and 76, which position has been unquestionably reached in view of Exhibit P14 communication issued by the Corporation, must be filled by appointing the disabled persons entitled to appointment under Section 34(1)(c) and (d). The respondents cannot be heard to contend that despite Roster No. 1 and

26 having been bypassed, the vacancy can only be utilized for appointing a candidate belonging to the DA-LV category. If the above stance of the respondents is accepted, it will result in a situation where, despite reaching the 3rd block in the 100-point reservation cycle, the respondents would effectively deny the reservation to the disabled falling under 34(1)(c) & (d). Such an outcome is inconsistent with the provisions of the law and established procedure.

18. In **Vikash Kumar v. UPSC** (2021 (5) SCC 370), 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 vigor 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. S.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. S.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. S.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, S.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** (2016 (7) SCC 761), 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. As a society, it has to be ensured that

additional support and facilities are provided 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.

19. 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 Art.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 Art.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 Art.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."

20. 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.

21. In view of the discussion above, the petitioner is entitled to succeed. This writ petition will stand allowed. Ext.P16 to the extent that the vacancy has been set apart to the selection process from the next ranked list for appointment of a candidate belonging to the low vision category is quashed. I hold that the petitioner is entitled to be appointed as Computer Programmer cum Operator in the 4th respondent Corporation against the 4% quota earmarked for persons with disabilities in the unfilled vacancy specified in Ext.P16 chart, which was published in furtherance to Ext.P2 notification. There will be a further direction to the 2nd respondent to advise the petitioner to the post of Computer Programmer cum Operator in the 4th respondent Corporation.

Sd/-
RAJA VIJAYARAGHAVAN V,
JUDGE

PS/17/12/2023

- Exhibit 10 TRUE COPY OF THE JUDGMENT DATED 22.10.2021 IN W.P.(C) NO. 22650/2019 PASSED BY LEARNED SINGLE JUDGE OF THE HON'BLE HIGH COURT
- Exhibit P11 TRUE COPY OF THE JUDGMENT DATED 25.03.2022 IN W.A. NO.223/2022 PASSED BY THE DIVISION BENCH OF THE HON'BLE HIGH COURT
- Exhibit P12 A TRUE COPY OF THE LETTER DATED 09.06.2022 ISSUED BY THE MANAGING DIRECTOR OF THE KERALA STATE BEVERAGES (MANUFACTURING AND MARKETING) CORPORATION LTD.
- Exhibit P13 TRUE COPY OF THE NOTIFICATION NO.ER IIA(1)2495/15/EW DATED 19.08.2022 ISSUED BY THE 2ND RESPONDENT PSC
- Exhibit P14 A TRUE COPY OF ADDENDUM NOTIFICATION DATED 23.01.2023 PUBLISHING SPECIAL RANK LIST OF DIFFERENTLY ABLED CANDIDATES FOR 3% LATERAL RESERVATION
- Exhibit P15 TRUE COPY OF THE JUDGMENT DATED 09.02.2023 IN CON. CASE (C) NO. 82/2023 PASSED BY THE DIVISION BENCH OF THE HON'BLE HIGH COURT
- Exhibit P16 A TRUE COPY OF THE APPOINTMENT CHART IN CATEGORY NO. 407/2013 PUBLISHED BY THE 2ND RESPONDENT
- Exhibit P17 TRUE COPY OF THE APPOINTMENTS CHART PUBLISHED BY THE 2ND RESPONDENT KPSC IN CATEGORY NO.353/2008
- Exhibit P18 TRUE COPY OF THE APPOINTMENTS CHART PUBLISHED BY THE 2ND RESPONDENT KPSC IN CATEGORY NO.407/2013