

'Vertical Reservation' By Calicut University For Persons With Disabilities Faulty And Illegal: Kerala High Court

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
P.B. SURESH KUMAR; J., SOPHY THOMAS; J.
Writ Appeal No.1527 of 2021; 3 February, 2023
UNIVERSITY OF CALICUT versus DR. ANUPAMA K.P.

Appellant by Advs. P. Ravindran (Sr.), Lakshmi Ramadas, Aparna Rajan, Sreedhar Ravindran, M.R. Sabu; Respondents by Advs. Amal Kasha, T.B. Hood, M. Isha, P.C. Sasidharan, SC

J U D G M E N T

P.B. Suresh Kumar, J.

Social justice is said to be one of the fundamental means to build a healthy and contented society. In a country of diversities like ours, where the need for conferment of special benefits and reservation to different classes of citizens are recognised from time to time for socio-economic and educational advancement, laying down a proper and correct procedure for conferment of such benefits without offending the constitutional and other rights of others, is a constant struggle. We are confronted with one such situation in this case and let us make an attempt to resolve the same.

2. The writ appeal arises from W.P.(C) No.16456 of 2021. The matter relates to the right of the petitioner therein for appointment as Assistant Professor in Journalism and Mass Communication in the University of Calicut (the University). The appellant is the petitioner in the writ petition. Parties and documents are referred to in this judgment for convenience, as they appear in the writ petition.

3. In terms of Ext.P1 notification, the University invited applications from eligible candidates for appointment to the post of Assistant Professor in various departments of the University. The number of vacancies notified were 63, of which 2 vacancies were of the Department of Journalism and Mass Communication. The petitioner who was qualified to be considered for appointment as Assistant Professor in Journalism and Mass Communication, had applied for selection for appointment in response to the notification. Ext.P4 is the rank list of the candidates applied for selection in the Department of Journalism and Mass Communication. In Ext.P4, the petitioner is assigned rank No.2. Even though there were 2 vacancies, the candidate who was assigned rank No.1 alone was appointed.

4. Section 6(2) of the Calicut University Act, 1975 provides that while making appointments to teaching posts by direct recruitment, the University has to *mutatis mutandis* observe the provisions contained in clauses (a), (b) and (c) of Rule 14 and Rules 15, 16 and 17 of the Kerala State and Subordinate Service Rules (KS & SSR), as amended from time to time. In light of the said provision, the University is following the 100 Point Roster contained in the Annexure to Part II KS & SSR, category-wise, based on the date of occurrence of vacancies, treating all departments of the University as one single unit. It is stated by the petitioner that going by the respective dates of occurrence of the vacancies in the Department of Journalism and Mass Communication, roster points 31 and 54 are the slots to be applied for filling up the vacancies that arose in the Department, of which the vacancy corresponding to roster point 31 is a slot due to open competition candidates and the vacancy corresponding to roster point 54 is a slot due to candidates belonging to Ezhavas, Thiyyas and

Billavas Communities (ETB Communities). According to the petitioner, insofar as there were 63 vacancies, the first rank holder should have been appointed against the vacancy corresponding to roster point 31 and the petitioner being the second rank holder as also a candidate belonging to the category ETB Communities, should have been appointed against the vacancy corresponding to roster point 54. It is stated by the petitioner that instead, even though the University has appointed the first rank holder in the first vacancy that arose in the Department of Journalism and Mass Communication, the petitioner was not appointed against the second vacancy that arose in the said department, on the ground that the said vacancy is one to be earmarked for candidates belonging to the Special Reservation Category “persons with disabilities” in terms of Section 34 of the Rights of Persons with Disabilities Act, 2016 (the Act). It is stated by the petitioner that social reservation in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes are to be effected vertically and special reservation in favour of “persons with disabilities” are to be effected horizontally and since the reservation in favour of “persons with disabilities” is horizontal reservation, the same has to be given effect to after filling up the slots by adjusting/accommodating those candidates who are entitled to reservation against their respective social reservation categories after deleting the corresponding number of candidates therefrom, without affecting the percentage of reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes. It is alleged by the petitioner that instead of resorting to the said procedure, the University has effected reservation in favour of “persons with disabilities” vertically as in the case of reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes, by earmarking roster points 2, 28 and 54 for the said classes and it is on account of the said reason that the petitioner was not appointed against roster point 54. It is also alleged by the petitioner that on account of the said incorrect procedure adopted by the University, the candidates belonging to ETB Communities who were otherwise entitled to 9 posts in a process of selection for filling up of 63 vacancies, could get only 8 posts. It is also stated by the petitioner that even though roster points 2, 28 and 54 were earmarked by the University for effecting reservation in favour of “persons with disabilities”, since qualified candidates were not available for appointment against vacancies corresponding to roster points 2 and 54 from the category of “persons with disabilities”, the University decided to resort to special recruitment for effecting appointments against the vacancies corresponding to the said roster points. Ext.P8 is the decision taken by the University in this regard. The case of the petitioner is that the procedure adopted by the University in the matter of drawing up the list of appointees is illegal, being violative of Rule 15 of Part II KS & SSR, and insofar as the vacancy corresponding to roster point 54 in the Annexure to Part II KS & SSR is earmarked for candidates belonging to ETB Communities, the petitioner should have been appointed against the said vacancy. The petitioner therefore sought a direction to the University to appoint her as Assistant Professor in Journalism and Mass Communication against the vacancy corresponding to roster point 54.

5. A counter affidavit was filed in the writ petition on behalf of the University. It is admitted by the University in the counter affidavit that three additional slots were introduced in the 100 Point Roster contained in the Annexure to Part II KS & SSR as slots 1A, 26A and 51A to comply with the requirement of 4% reservation as is provided for in Section 34 of the Act. It is also admitted by the University in the counter affidavit that on account of the introduction of the additional slots referred to above, the original slot 31 became slot 29 and the original slot 54 became slot 51A,, and it is on account

of the said reason that the petitioner was not appointed. The stand taken by the University in the counter affidavit is that the reservation in favour of “persons with disabilities” is to be and can be given effect to only in the manner followed by the University, and there is no illegality, therefore, in the procedure adopted by the University or in the appointments made.

6. It is seen that the learned Single Judge dismissed the writ petition taking the view that since the vacancy corresponding to roster point 54 has been filled up by appointing a candidate belonging to ETB Communities, though not in the Department of Journalism and Mass Communication, there is no illegality in the appointments effected. The petitioner is aggrieved by the decision of the learned Single Judge and hence this appeal.

7. Heard the learned Senior Counsel for the petitioner as also the learned Standing Counsel for the University.

8. The learned Senior Counsel for the petitioner reiterated the case of the petitioner in the writ petition. He has relied on the nine Judge Bench decision of the Apex Court in **Indra Sawhney v. Union of India**, 1992 Supp (3) SCC 217 and the decision of the Apex Court in **Rajesh Kumar Daria v. Rajasthan Public Service Commission**, (2007) 8 SCC 785, in support of the case of the petitioner. It was asserted by the learned Senior Counsel that the procedure adopted by the University for effecting the reservation in favour of “persons with disabilities” amounts to vertical reservation which is not only impermissible, but also goes against the provisions contained in Rule 15 of Part II KS & SSR. The submission of the learned Senior Counsel, in the circumstances, was that in the absence of a candidate qualified to be considered for appointment against the vacancy that arose in the Department of Journalism and Mass Communication among the applicants entitled to reservation under the category “persons with disabilities”, the petitioner should have been appointed against the vacancy corresponding to roster point 54.

9. The learned Standing Counsel for the University did not dispute the fact that had there not been any reservation in favour of “persons with disabilities”, the petitioner being the second rank holder and a candidate belonging to Ezhava Community, would have been certainly entitled to be appointed against the vacancy corresponding to roster point 54. As stated in the counter affidavit, the learned Standing Counsel submitted that in light of the provisions contained in Rules 14 to 17 of Part II KS & SSR, the reservation in favour of “persons with disabilities” can be effected only in the manner followed by the University and any other procedure would affect the rights of candidates entitled to reservation in terms of the said Rules. The learned Standing Counsel has also submitted that the said procedure is followed in light of G.O. (P) No.46/2008/SWD dated 19.07.2008, G.O.(P) No.8/2017 dated 06.05.2017 as also Ext.P7 order issued by the Government.

The learned Standing Counsel has also relied on the decision of this Court in **Muhazin P. v. Government of Kerala**, 2010 (4) KHC 887, to justify the procedure followed by the University.

10. We have examined the arguments advanced by the learned counsel for the parties on either side.

11. In light of the submissions made by the learned counsel for the parties, the question that falls for consideration is whether the procedure adopted by the University for effecting reservation in favour of “persons with disabilities” is correct.

12. Section 34 of the Act dealing with reservation reads thus:

“34. Reservation.—(1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

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

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

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

(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.”

As evident from the extracted provision, the statutory requirement is that not less than 4% of the total number of vacancies shall be filled up 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), referred to therein. It is also evident from the extracted provision that 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 a 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.

13. The reservation provided for under the Act in favour of “persons with disabilities” being one that falls within the purview of Article 16(1) of the Constitution, there cannot be any doubt to the proposition that the said reservation has to be given effect to only horizontally. This aspect has been clarified by the Apex Court in **Indra Sawhney**. In addition, in the said case, the Apex Court has also laid down the procedure for effecting such reservations. The relevant portion of paragraph 812 of the judgment reads thus:

“There are two types of reservations, which may, for the sake of convenience, be referred to as ‘vertical reservations’ and ‘horizontal reservations’. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations — what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains — and should remain — the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.”

(Underline supplied)

In the context of examining the correctness of the procedure followed by the Government of Uttar Pradesh and its authorities in the matter of effecting special reservations in favour of women for admission to medical courses, the Apex Court has elaborated and explained the procedure aforesaid in **Anil Kumar Gupta v. State of U.P.**, (1995) 5 SCC 173. Paragraph 18 of the said judgment reads thus:

“18. Now, coming to the correctness of the procedure prescribed by the revised notification for filling up the seats, it was wrong to direct the fifteen per cent special reservation seats to be filled up first and then take up the OC (merit) quota (followed by filling of OBC, SC and ST quotas). The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied — in case it is an overall horizontal reservation — no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied.) Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the OC quota.”

(Underline supplied)

In the context of special reservation for women provided for in the Rajasthan Judicial Service, the Apex Court has elaborated further the procedure aforesaid in **Rajesh Kumar Daria**.

Paragraph 9 of the said judgment reads thus:

“9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are “vertical reservations”. Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are “horizontal reservations”. Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. (Vide Indra Sawhney, R.K. Sabharwal v. State of Punjab, Union of India v. Virpal Singh Chauhan and Ritesh R. Sah v. Dr. Y.L. Yamul.) But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of “Scheduled Caste women”. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example:

If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC woman candidates, then there is no need to disturb the list by including any further SC woman candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four woman SC candidates. (But if the list of 19 SC candidates contains more than four woman candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess woman candidates on the ground that “SC women” have been selected in excess of the prescribed internal quota of four.)”

(Underline supplied)

14. Admittedly, the University has not adopted the procedure as has been laid down in the decisions aforesaid of the Apex Court. Instead, as pointed out by the petitioner, the University has effected the reservation in favour of “persons with disabilities” vertically as is done in the case of reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes, by earmarking roster points 1, 26 and 51 for the said classes and additional slots were created in those roster points as slots 1A, 26A and 51A in order to protect the interests of candidates who are otherwise entitled to be considered for appointment against vacancies corresponding to the said roster points. In that process, the roster points fixed in terms of Annexure to Part II of KS & SSR for Scheduled Castes, Scheduled Tribes and all Other Backward Communities have been completely changed. As rightly pointed out by the learned Senior Counsel for the petitioner, it is on account of the said reason that the vacancy

corresponding to roster point 54 became the vacancy corresponding to roster point 51 A earmarked for "persons with disabilities" and the petitioner, who would have otherwise been appointed against the vacancy corresponding to roster point 54, was denied appointment. In light of the decisions of the Apex Court referred to in the preceding paragraph, the procedure adopted by the University as referred to above is faulty and illegal. In **Indra Sawhney**, it has been held categorically by the Apex Court that while effecting the reservations in favour of category of persons like "persons with disabilities", it is obligatory for the employer to ensure that the percentage of reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes remain intact. In the case on hand, it is seen that on account of the faulty procedure adopted by the University, candidates belonging to ETB Communities who were otherwise entitled to 9 posts in a process of selection for filling up of 63 vacancies, could get only 8 posts. That apart, the procedure adopted by the University is violative of Rule 15 of Part II KS & SSR also, for the same is contrary to the rotation turns provided for in the Annexure to Part II KS & SSR. In terms of the said Annexure, the rotation turns for ETB Communities are 2, 14, 18, 28, 34, 42, 54, 58 and 62 and on account of the introduction of additional slots in the roster, the turns of ETB communities have been changed to 3, 15, 19, 30, 36, 44, 57 and 61. When a percentage of reservation is fixed in favour of a category by allotting reserve points in a roster, the same are to be filled from among the members of that reserved category only. It is so held by the Apex Court in **R.K. Sabharwal v. State of Punjab**, (1995) 2 SCC 745. The relevant portion of paragraph 4 of the judgment in the said case reads thus:

"When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts."

Again, the procedure adopted by the University is violative of the requirement under Section 34 of the Act also, as, if the said procedure is adopted, in a rotation of 104 appointments, only 4 persons with disabilities would be appointed, which may not satisfy the requirement of 4% reservation.

15. As noticed, the view taken by the learned Single Judge is that the vacancy corresponding to slot 54 in the 100 Point Roster has been filled up by the University by appointing a candidate belonging to ETB Communities and it is on account of the said reason, the learned Single Judge chose to dismiss the writ petition. The petitioner also takes the stand that slot 54 in the 100 Point Roster has gone to the vacancy that arose in the Botany Department of the University on 31.05.2019 against which the fourth respondent in the writ appeal was appointed and it is on that premise, the petitioner has impleaded the said person in the writ appeal as the person who would be affected by the decision in the writ petition. It is seen that the vacancy corresponding to slot 54 has become slot 51A on account of the introduction of additional slots in the roster for effecting reservation in favour of "persons with disabilities", and no candidate was appointed by the University against the said slot since there were no candidates among the "persons with disabilities" who have applied for selection for appointment as Assistant Professor in the Department of Journalism and Mass Communication. The fourth respondent in the writ appeal is a person appointed against roster point 57 which was a slot due to an open competition

candidate. The premise on which the learned Single Judge chose to dismiss the writ petition cannot, therefore, be said to be correct.

16. We have perused G.O.(P) No.46/2008/SWD dated 19.07.2008 and G.O.(P) No.8/17 dated 06.05.2017, copies of which were made available to us at the time of hearing, as also Ext.P7 order issued by the Government. The procedure prescribed by the Government in the said orders are contrary to the decisions of the Apex Court in **Indra Sawhney, Anil Kumar Gupta** and **Rajesh Kumar Daria** as regards the procedure to be followed while effecting horizontal reservations, which we are bound to follow in terms of Article 141 of the Constitution. We have also perused paragraph 11 of the judgment of this court in **Muhazin P.**, on which emphasis was made by the learned Standing Counsel for the University, and we find that the case aforesaid is a case where the question was whether the reservation in favour of “persons with disabilities”, if effected in terms of G.O.(P) No.46/2008/SWD dated 19.07.2008, would go against the rules of rotation provided for in Rules 15 and 17 of Part II KS & SSR, and the said question was answered in the negative. The said case, according to us, has nothing to do with the question which we are called upon to decide in this case.

17. Having found that the procedure adopted by the University for effecting reservation in favour of “persons with disabilities” was illegal and faulty, the next aspect to be considered is as to the relief to which the petitioner is entitled to. As explained by the Apex Court in **Anil Kumar Gupta** and **Rajesh Kumar Daria**, in the case on hand, the University should have first filled up slots in the roster due to open competition candidates and candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes, and should have thereupon examined the number of candidates belonging to the category “persons with disabilities” who could secure the appointments. Insofar as three persons are entitled to appointment in that process, the shortfall, if any, should have been made up by adjusting/accommodating the required number of candidates belonging to the category “persons with disabilities” against their respective social reservation categories. Had this been a case where the requirement under Section 34 could not have been satisfied by adopting the said procedure, the University should have deleted the corresponding number of candidates from the bottom of the list, instead of introducing additional slots for “persons with disabilities” in between. Be that as it may, inasmuch as it is found that slot 54 in the roster due to the second vacancy that arose in the Department of Journalism and Mass Communication on 01.04.2019 is one earmarked for appointment of a candidate belonging to the communities “Ezhavas, Thiyyas and Billavas”, in the absence of any candidate belonging to the category “persons with disabilities”, the petitioner being the second rank holder and a candidate belonging to the communities “Ezhavas, Thiyyas and Billavas”, she should have been appointed by the University against that vacancy. As noted, since no candidate was appointed by the University against the second vacancy that arose in the Department of Journalism and Mass Communication on 01.04.2019, no one would be affected also by such appointment.

18. Inasmuch as it is found that the procedure adopted by the University for effecting reservation in favour of “persons with disabilities” was incorrect and wrong and as persons selected following the incorrect and wrong procedure have already been appointed and are working in the University for quite some time, and since their appointments are not under challenge in the writ petition, with a view to avoid further disputes as regards the selection process, we deem it appropriate to direct the

University to rework the rotation chart in respect of the appointments already made pursuant to Ext.P1 notification notionally, following the procedure prescribed by the Apex Court in **Indra Sawhney, Anil Kumar Gupta and Rajesh Kumar Daria** and retain persons who are appointed otherwise than in accordance with the said procedure in supernumerary posts so that they will not be affected by this decision and the University will be free to adjust their appointments against future vacancies as and when they arise. Having regard to the peculiar facts of this case, we also deem it appropriate to clarify that in the process of reworking the roster chart, insofar as it is seen that ten vacancies notified could not be filled up for want of qualified candidates, the University would be free to make up the shortfall due to the category “persons with disabilities” if qualified hands are available among the applicants for selection. Insofar as we are directing the appointment of the petitioner in the vacancy in the Department of Journalism and Mass Communication, we also deem it appropriate to direct that if the reservation in favour of the category “persons with disabilities” cannot be completed even after following the procedure directed, the shortfall can be made up by earmarking the requisite number among the next arising vacancies in the category of Assistant Professor for them, for such a course would not be contrary to the provisions contained in Section 34 of the Act, as it permits carrying forward of vacancies to the subsequent recruitment years, if the vacancies due to the category cannot be filled up due to non-availability of suitable persons with benchmark disabilities or for any other sufficient reasons.

In the result, the writ appeal is allowed, the impugned judgment is set aside and the writ petition is disposed of as follows:

- i. The University is directed to appoint the petitioner as Assistant Professor in the Department of Journalism and Mass Communication in the vacancy corresponding to roster point 54 forthwith.
- ii. The University is also directed to rework the rotation chart in respect of the appointments already made pursuant to Ext.P1 notification notionally, following the procedure prescribed by the Apex Court in **Indra Sawhney, Anil Kumar Gupta and Rajesh Kumar Daria** and retain persons who are appointed otherwise than in accordance with the said procedure in supernumerary posts, so that they will not be affected by this decision and the University will be free to adjust their appointments against future vacancies as and when they arise.
- iii. It is clarified that in the process of reworking the roster chart as directed, the University would be free to make up the shortfall due to the category “persons with disabilities”, if qualified hands are available among the applicants for selection and if the reservation in favour of the category “persons with disabilities” cannot be completed even after following the said procedure, the shortfall can be made up by earmarking the requisite number of vacancies next arising in the category of Assistant Professor for the category “persons with disabilities”.
- iv. It is also clarified that the direction contained in this judgment will not affect the rights of parties in pending writ petitions where the selection and appointments made pursuant to Ext.P1 notification are already under challenge.