

## VERDICTUM.IN

**P.B.SURESH KUMAR & C.S.SUDHA, JJ.**

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**Writ Appeal Nos.1445, 1459, 1514, 1530, 1546, 1558, 1602, 1618, 1619, 1620, 1622, 1623, 1624, 1625, 1626, 1627, 1629, 1630, 1631, 1632, 1636, 1644, 1667, 1668, 1669, 1679, 1680, 1681, 1682, 1711, 1720, 1721, 1722, 1723, 1725, 1726, 1727, 1728, 1729, 1737, 1738, 1739, 1740, 1746, 1747, 1758, 1759, 1760, 1761, 1762, 1763 and 1764 of 2022**

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**Dated this the 13<sup>th</sup> day of December, 2022.**

### **ORDER**

**P.B.Suresh Kumar, J.**

Admit.

Issue notice to the respondents.

These appeals arise from the common judgment in three writ petitions namely, W.P.(C) Nos.17632 of 2021, 19808 of 2021 and 11673 of 2022.

2. When the appeals came up for admission, the learned counsel for the appellants prayed that if the court does not propose to decide the appeals on merits at the admission stage itself, an interim order staying the operation of the impugned judgment be granted until the final disposal of the appeals. As we felt, having regard to the facts and circumstances of the case, that it may not be possible to decide the appeals finally at the admission stage, the learned counsel for the parties on either side were heard

on the prayer made by the appellants for the interim order.

3. The documents are referred to in this order for convenience as they appear in W.P.(C) No.19808 of 2021.

4. The matter relates to the implementation of the provisions contained in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (the 1995 Act) and the Rights of Persons with Disabilities Act, 2016 (the 2016 Act) concerning reservation of differently abled persons for appointments in aided schools.

5. In terms of the impugned judgment, the learned Single Judge declared that 3% reservation of the total number of vacancies in the cadre strength shall be provided in the appointments for differently abled persons in aided schools with effect from 07.02.1996 and the backlog in the appointments shall be filled up for the period upto 18.04.2017 on that basis. Similarly, it was declared that 4% reservation of the total number of vacancies in the cadre strength shall be provided in the appointments in aided schools with effect from 19.04.2017 and the backlog up-to-date shall be filled up on that basis. In light of the said declarations, the learned Single Judge quashed Ext.P5 order issued by the Government on 08.11.2021 directing compliance of the provisions

contained in the 1995 Act and 2016 Act in terms of the declarations aforesaid to the extent the same provides that the backlog shall be filled up against vacancies that arose after 08.11.2021. In terms of the impugned judgment, the learned Single Judge has also directed that the backlog vacancies from 07.04.1996 shall be calculated and roster shall be prepared tabulating the first in 33 vacancies from 07.02.1996 and the first in 25 vacancies from 19.04.2017 onwards for appointing persons with disabilities as against vacancies that arose after 18.11.2018, the date on which the Government decided to implement the provisions in the statutes referred to herein-above relating to reservation of differently abled persons for appointments in aided schools in the State. It was also directed in the impugned judgment that only after filling up the backlog vacancies as directed above, the appointments made against vacancies that arose after 18.11.2018 which have not been approved till date, shall be considered for approval. During the pendency of the writ petitions, on 25.06.2022, the Government issued Ext.R1(a) order prescribing the procedure to be followed for filling up the backlog in the vacancies arising after 08.11.2021 and the direction in the impugned judgment is to fill up the backlog as directed by the Government in Ext.R1(a) order against vacancies which arose after 18.11.2018. It

was, however, clarified by the learned Single Judge that the appointments made against vacancies which arose after 18.11.2018 which have already been approved, need not be unsettled. The appellants are aggrieved by the said directions.

6. The majority of the appellants are not parties to the writ petitions. Among them, some are Managers of aided schools and the rest are persons appointed as teachers and other staff in aided schools against vacancies which arose after 18.11.2018. In terms of Ext.P5 order dated 08.11.2021, the Government has already issued directions for implementation of the provisions of the statutes aforesaid as regards reservation in appointments in aided schools against future vacancies. It was pointed out that none of the Managers who are before this Court as appellants has any grievance against the said directions of the Government inasmuch as they concede that they are prepared to fill up the backlog against vacancies which arose after 08.11.2021. Their grievance is against the direction in the impugned judgment to give effect to the provisions aforesaid with effect from 18.11.2018 itself as also the direction therein that appointments already made against vacancies which arose after 18.11.2018 and have not been granted approval, shall not be approved until the backlog is filled up. As far as the

remaining appellants are concerned, their grievance is that in the light of the impugned judgment, their appointments are now in a stalemate.

7. The learned counsel for the appellants argued that appointments made by the Managers against vacancies which arose after 18.11.2018 cannot be said to be illegal in any manner, inasmuch as they are made in accordance with the provisions of the Kerala Education Act and the Kerala Education Rules, and the Educational Officers are, therefore, bound to approve the same. According to the learned counsel, the learned Single Judge, in the circumstances, was not justified in directing that such appointments which are otherwise valid, shall not be approved. It is all the more so, according to the learned counsel, since the learned Single Judge directed that such appointments of similarly placed persons which are already approved, need not be unsettled. The learned counsel for the appellants has also challenged the *locus standi* of the petitioner in W.P.(C) No.19808 of 2021 for having instituted a writ petition seeking the reliefs as has been granted to him by the learned Single Judge. The learned counsel has also pointed out that even if appointments already made have to be disturbed, the same shall be done only on a case-to-case basis, after verifying which of

the appointments would be affected, if the cycle of rotation for reservation has been complied with. It was also argued by the learned counsel for the appellants, placing reliance on Section 36 of the 2016 Act that the scheme of the statute is that the appropriate Government may by notification, require that the employer in every establishment shall furnish such information or return as may be prescribed by the Central Government in relation to vacancies earmarked for persons with benchmark disability that have occurred or are about to occur in that establishment to such special employment exchange as may be notified by the appropriate Government and the establishment shall thereupon comply with such requisition. It was pointed out that till date, special employment exchange has not been notified, and in absence of the establishment of any special employment exchange, the appointments made by the Managers otherwise than in accordance with the provisions contained in the 1995 and 2016 Act, cannot be said to be illegal. The essence of the submissions made by the learned counsel therefore, was that a blanket direction to the Educational Officers to refrain from approving appointments validly made until the backlog is filled up, is certainly unwarranted.

8. The learned Government Pleader pointed out that

even though the Government had stiffly opposed the prayer of the petitioners in the writ petitions that the backlog in the appointments shall be filled up in the vacancies which arose from 18.11.2018, the Government has decided to accept the judgment and comply with the directions contained therein.

9. It is seen from the materials on record that even though the 1995 Act provided for reservation of differently abled persons in appointments in establishments including aided schools, the said provision has not been given effect to for several years on account of the recalcitrant attitude of the State Government. It was while so, the 2016 Act came into force with additional provisions for reservation for differently abled persons in the appointments in aided schools. Even thereafter, the provisions aforesaid have not been given effect to in the State and also in other States. It is seen that a series of directions have been issued by the Apex Court in the circumstances to the State Governments to give effect to the provisions contained in the 1995 and 2016 Acts and in compliance with those directions, series of orders have been issued by the State Government to give effect to the provisions relating to reservation in appointments for differently abled persons. Ext.P1 order dated 18.11.2018 is one in that series, in terms of which the Government

ordered to extend the provisions in the said statutes as regards reservations to all aided educational institutions in the State with immediate effect. Even though Ext.P1 order was challenged in a batch of writ petitions before this Court by the managements of aided schools, there was no interim order interdicting implementation of the same. The fact that the challenge against Ext.P1 order was repelled by this Court and the said decision has become final, is not disputed by the appellants. In other words, it was obligatory on the part of the educational authorities to ensure compliance of the same with effect from 18.11.2018. True, there were practical impediments in giving effect to the directions for want of necessary guidelines. It is seen that instead of resolving the bottlenecks created on account of want of guidelines, the educational authorities started approving the appointments already made ignoring Ext.P1 order, flouting the provisions in the 1995 and the 2016 Acts as also the various directions issued by the Apex Court, on the basis of which Ext.P1 order has been issued. The appointments made flouting Ext.P1 order, according to us, are patently illegal. There is therefore, no substance, *prima facie*, in the argument that the appointments made by the Managers flouting the direction contained in Ext.P1 order are valid. If those appointments



are illegal being contrary to the provisions contained in the 1995 and the 2016 Acts, the appellants cannot be heard to contend that the learned Single Judge has acted illegally in directing the authorities to refrain from approving the same until the illegality in the said appointments are removed by filling up the backlog. In essence, what is directed by the learned Single Judge is implementation of the provisions contained in the 1995 and the 2016 Acts insofar as it relates to reservation in appointments of differently abled persons in aided schools which even otherwise, the State Government is bound to implement. There is also no substance in the argument based on the provision contained in Section 36 of 2016 Act, since the learned Government Pleader has made available the order issued by the Government as early on 18.03.2011, in terms of which the State Government has established special employment exchanges throughout the State for the purpose of the statutes referred to above. On an evaluation of the materials on record, we are of the *prima facie* view that staying the impugned judgment as such will have the effect of staying the provisions contained in the 1995 and 2016 Acts relating to reservation in appointments as also the directions issued by the Apex Court for implementation of the same. That apart, as noted, the learned Single Judge did not interfere with

the appointments made against those vacancies which arose after 18.11.2018 and which have not been approved by the Educational Officers. Instead, the learned Single Judge has only directed that proposals for approving the said appointments shall be deferred until the backlog is filled up, indicating clearly that once the backlog is filled up, the existing proposals for approval of appointments can be taken up for consideration and orders.

10. The learned Government Pleader has endorsed the submission made by the learned counsel for some of the appellants that the question whether appointments already made need to be disturbed, is one to be examined on a case-to-case basis and in terms of Ext.R1(a) order, the Government has in fact directed the Educational Officers to examine whether the direction contained in Ext.P1 order has been complied with on a case-to-case basis. It was also pointed out by the learned Government Pleader that going by the data made available to the Court by the State Government, sufficient number of qualified hands are not available in the State from among the differently abled persons so as to enable the Managers to fill up the entire backlog. Similarly, it was pointed out that about 4700 new vacancies are likely to arise at the end of the current financial year. The submission made by the learned

Government Pleader based on the said data was that, all the qualified differently abled persons can be accommodated in the said vacancies and in all probabilities, approvals can be granted to appointments already made after making appropriate adjustment as regards the vacancies.

In the aforesaid facts and circumstances, we do not find any reason *prima facie* to stay the operation of the impugned judgment as such. However, in the light of the submissions made by the learned Government Pleader that large number of vacancies are likely to occur soon and sufficient candidates are not available for appointment against the vacancies earmarked for differently abled persons, we deem it appropriate to clarify that, if the backlog of differently abled persons is filled up by the Managers concerned in the manner as has been indicated in Ext.R1(a) order and as directed by the learned Single Judge, the impugned judgment will not stand in the way of the Educational Officers concerned in considering the proposals for approval of the appointments already made in the schools under their respective jurisdiction, after making appropriate adjustments as regards the vacancies, if required, subject to the final outcome of the writ appeals, for we think that the said clarification would redress substantially the grievances voiced by the

appellants and there may not be any need at all to decide all the appeals on merits. Ordered accordingly.

Sd/-

**P.B.SURESH KUMAR, JUDGE.**

Sd/-

**C.S.SUDHA, JUDGE.**

YKB