

**In the Court of the State Commissioner for Persons with
Disabilities, Kerala**
Anjaneya, T.C 9/1023 (1) , Ground Floor, Sasthamangalam, Thiruvananthapuram-695 010

Present: Sri. S.H. Panchapakesan, State Commissioner.

OP (RPWD) No.2593/S2/2021

Monday, the 28th February, 2022

Petitioner : **Dr. Joshin Joseph**
Pariyath House,
Kurianad .P.O.,
Kottayam – 686 636

Respondents : 1. **The Manager**
Marian College,
Kuttikkanam,
Kottayam.

2. **The Additional Chief Secretary**
Higher Education Department,
Govt. Secretariat,
Thiruvananthapuram.

This case was finally heard on 26.02.2022, and the Court passed the following Order today:

ORDER

The petitioner herein, Dr. Joshin Joseph, is a differently abled person, suffering from 50% locomotor disability. He applied for the post of Assistant Professor in Commerce in the respondent Marian College, Kuttithanam, Kottayam District on the basis of their notification inviting applications for the post. The claim of the petitioner is that he is entitled to get the appointment in the College under the disability quota. But, it is alleged that the Manager of the respondent College had ignored the statutory provisions in this regard and denied to appointment to the petitioner. In the above circumstances, the petitioner filed the petition before this Statutory Authority for the redressal of his grievances.

2. The 1st respondent Manager of the said Marian College filed Counter Statement that the reservation u/s.34 of the RPwD Act, 2016 was not complied with when the said appointment of the teaching staff was made in the College as per the said notification. Anyhow, the respondent Manager unequivocally admitted that the

cadre strength of the teaching staff in the College as on 18.04.2017 was 17 and non teaching staff was 11. But, there was no differently abled person in the cadre of teaching staff during that period. After 18.04.2017, there arose 8 teaching posts vacancies and one non-teaching post vacancy in the establishment, which increased the cadre strength of the teaching posts to 25 (i.e 17 +8= 25) and that of the non-teaching posts to 12 (i.e 11 + 1 =12). He again unequivocally admitted that among the said 25 personnel in the teaching cadre, there is no differently abled person. But in the said non-teaching cadre, there is one person suffering from locomotor disability. However, he contended that there is no back log vacancy for the differently abled persons in both the cadre. Interalia, he raised some formal contentions in the sense that the claim raised by the petitioner against the respondent College is not sustainable.

3. The 2nd respondent Additional Chief Secretary, Higher Education Department also filed a Counter Statement in the sense that the 1st respondent Manager of the said College did not comply with the reservation u/s.34 of the RPwD Act, 2016, when the subject matter appointments were made. As the 1st respondent is duty bound to follow the reservation in the matter of appointment of teaching and non-teaching staff in the College as per Section 34 of the RPwD Act, specific direction was given to the Director of Collegiate Education for appropriate action in this matter. It is further averred that the Government have already issued G.O (Ms) No.96/ 2021/ HEDN dated 15.02.2021 in connection with the matter.

4. On the basis of the above claims and contentions, the following points were raised for consideration:

(1) Whether the reservation u/s.34 of the RPwD Act, 2016 is applicable in the matter of appointment of teaching and non-teaching staff in the 1st respondent Marian College?

(2) Whether the petitioner is entitled to get appointment in the said College as Assistant Professor in Commerce under the disability quota as he claimed?

(3) The reliefs, if any?

5. No oral evidence was adduced by the parties. The Exts.P1 and P2 were marked on the side of the petitioner. No document was marked on the side of the

respondents. Both sides were heard.

6. **The point No.1:** Admittedly, the 1st respondent Marian College is a Govt. aided College. As per G.O (Ms) No.96/2021/HEDN dated 15.02.2021, the Govt. were pleased to order 4% reservation of the total number of vacancies in the cadre strength in the appointments in the aided colleges including Professional Colleges to the posts which are identified / to be identified as suitable for persons with disabilities with effect from 19.04.2017 as per the provisions of the RPwD Act, 2016. A copy of the said G.O was marked as the Ext. P1. It is found that for the issuance of the Ext. P1, the Government (the Higher Education Department) relied on an earlier order G.O (P) No.18/2018/SJD dated 18.11.2018. But, in the meanwhile, G.O (P) No.18/2018/SJD dated 18.11.2018 was challenged before the Hon'ble High Court of Kerala by some corporate managements. Anyhow, those writ petitions were finally dismissed by the Division Bench of the Hon'ble High Court. Therefore, the unsuccessful petitioners/managements preferred Special Leave Petitions before the Hon'ble Supreme Court. But, their attempt was failed, and they had withdrawn their petitions. Therefore, the Hon'ble Apex Court was pleased to dismiss those petitions as withdrawn. Thus the verdict of the Hon'ble High Court of Kerala (in WP (C) No. 224/19 dated 26.08.2020) became final. The Ext. P1 was issued in compliance of the said judgment dated 26.08.2020 of the Hon'ble High Court of Kerala in WP (C) No. 224/19.

7. In the light of the above discussion, it is palpable that the Private Managements of the aided educational institutions in Kerala fought with their tooth and nail against the determined policy of the Govt. of Kerala in the matter of reservation in the private aided educational institutions on the basis of Section 34 of the RPwD Act, 2016. Section 34 of the Act reads as follows:

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 percent 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 till 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 persons 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.

8. On a careful reading of Section 34 of the Act it is clear that there should be 4% reservation in every establishment for the differently abled person in the matter of appointments on the basis of its cadre strength. The RPwD Act, 2016 came into force on 19.04.2017. Till 18.04.2017, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was in force (from 07.02.1996 to 18.04.2017) under the 1995, Act, there was a specific provision under section 33 for the said reservations to the tune of 3% for 7 categories of persons with disabilities. But, under the 2016 Act, there are 21 categories of persons with disabilities as per the schedule therein, and the percentage was enhanced to 4%. The Govt. of India notified that 1, 26, 51 and 76 are the places for reservation in a roster of 100 persons selected for the appointment. It is very relevant and material to note that no appointment was made in the Govt. aided educational institutions in Kerala following section 33 of the 1995 Act or Section 34 of the RPwD Act till date (i.e, no Govt. aided management had issued an appointment order so far in their establishment stating specifically that a teaching post or non-teaching post was filled up either by following the provisions under the 1995 Act or the RPwD Act 2016). I have already stated that the Govt. of India specified the places for reservation as 1, 26, 51 and 76 in a roster of 100 persons under the RPwD Act, 2016. It was further clarified that the said 1st place will go to blind or low vision category. 26th place will go to hearing impaired category. 51st place will go to locomotor disability/ cerebral palsy and 76th place will go to intellectual disability and multiple disability.

9. The above discussion would convey a clear idea regarding the scheme of reservation under the RPwD Act. As the Govt. aided educational institutions receive money from the State exchequer, the reservation u/s.34 of the RPwD Act (or u/s.33 of the 1995 Act) is relevant and applicable with the above legislative intent to Ext.P1

order was issued. The fact that the said G.O (P) No.18/2018/SJD dated 18.11.2018 was upheld by the Hon'ble Apex Court is also one of the reasons for the issuance of the Ext. P1. The Ext.P2 is a copy of the disability certificate of the petitioner.

10. It is very interating that the 1st respondent manager of the college claimed that he had already complied with the vertical reservation u/s.34 of the RPwD Act (or u/s.33 of the 1995 Act) by simply appointing a person with locomotor disability as a non-teaching staff, though no such candidate was appointed as a teaching staff of the College.

11. As I have already stated that blind / low vision is the 1st category in the 1st block of 25 personnel (cadre strength). Admittedly, no person belonging to that category was appointed in the College so far. The 2nd category is hearing impaired in the 2nd block of 26-50 personnel. Anyhow, no one was appointed from that category. The 3rd category is locomotor disability/ cerebral palsy in the 3rd block of 51 to 75 personnel and so soon. The law does not permit any type of deviation or overlapping in the matter of reservation u/s.34 of the RPwD Act, 2016 (or 33 of the 1995 Act). Hence, the said contentions of the 1st respondent manager that he had already complied with the disability reservation in the appointment of non-teaching staff in the college is only to be discarded, as the cadre strength of the non-teaching staff is 12. In other words, blind person's quota still remains vacant for appointment, whereas, locomotor disability / cerebral palsy quota does not come for the appointment as the turn not yet started (as per the cadre strength). But, on the other hand, the present cadre strength in the teaching posts is 25. Anyhow, no blind / low vision person was given appointment in the 1st block of teaching staff (i.e 25 cadre posts). Then, the next turn is for hearing impaired / hard of hearing category. But, that category was not identified for the appointment as Assistant Professor u/s.33 of the 2016 Act (or Section 32 of the 1995 Act). Of course, it depends upon recruitment year. In the said view of the matter, it is not possible to hold that the present petitioner, who is suffering from locomotor disability, deserves reservation in the 2nd respondent's College. In other words, reservation u/s. 34 of the Act is squarely applicable, and to be complied with the 2nd respondent college, whereas, the petitioner is not eligible for the reservation, as his turn does not come for consideration. The point No.1 is answered accordingly.

12. **The point No.2:** In the light of my conclusion on the point No.1, it is arduous to hold that the petitioner is entitled to get appointment as Assistant Professor

in Commerce under the disability quota in the 1st respondent College, as his turn is yet to come. Now, the cadre strength of the teaching staff in the College is 25. (I took the cadre strength from the date of establishment of the 2nd respondent college). The next block of 25 personnel covers the vertical reservation for locomotor isability/ cerebral palsy category. (Hearing impaired persons are found not suitable for the post of Assistant Professor in Arts & Science Colleges). Therefore, the claim of the petitioner for appointment under disability quota as per the present notification is not sustainable. Therefore, the Point No.2 is found against the petitioner.

The Point No. 3 : In the light of my findings on the point Nos. 1 & 2, the petitioner does not deserve any kind of relief in the proceeding.

In the result, the petition is dismissed.

Dated this the 28th day of February, 2022

Sd/-

S.H. PANCHAPAKESAN
State Disability Commissioner

Appendix :

Exhibits marked on the side of the petitioner

1. Ext.P1 : Copy of G.O (Ms) No.96/2021/HEDN dated 15.02.2021
2. Ext.P2 : Copy of the disability certificate of the petitioner .

Exhibits marked on the side of the respondents

NIL

Forwarded by order

Administrative Officer

Sd/-

S.H. PANCHAPAKESAN
State Disability Commissioner