

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.12.2018

Pronounced on : 08.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.5856 of 2010

and

M.P.No.1 of 2010

S.Gopikrishnan

.. Petitioner

Vs.

1. Government of Tamil Nadu  
Rep. by its Secretary  
Department of Higher Education,  
Fort St. George,  
Chennai 600 009.

2. Management,  
N.G.N.G. Higher Secondary School,  
Reddiyarur Post,  
Pollachi Taluk,  
Coimbatore District 642 007.

3. P.Selvanayki,  
N.G.N.G. Higher Secondary School,  
Reddiyarur Post,  
Pollachi Taluk,  
Coimbatore District 641 007.  
(R3 - Impleaded as per order dated  
24.2.14 in MP.No.1/11 in WP.5856/2010)

4. The Secretary to the  
Department of School Education,  
Fort St. George,  
Chennai - 600 009.

.. Respondents

(R4 suo motu impleaded vide court order  
dated 29.10.18, made in WP.5856/10)

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to provide for 3% reservation for the physically handicapped in respect of entire non-teaching post as per the cadre strength in the 2<sup>nd</sup> respondent school and by directing the 2<sup>nd</sup> respondent to appoint the petitioner as a Junior Assistant in

the 2<sup>nd</sup> respondent School to appoint the petitioner as a Junior Assistant in the 2<sup>nd</sup> respondent School pursuant to the advertisement in Dinathanthi dated 29.01.2010.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.A.Rajaperumal (for R1)  
Additional Government Pleader

M/s.Profexs Asso. (for R2)

Mr.R.Kameshkumar (for R3)

#### O R D E R

Heard the learned counsel for the petitioner and learned counsel appearing on behalf of the respondents.

2. The petitioner has filed this writ petition for issuance of a writ of mandamus to direct the respondent authorities to provide for 3% reservation for the physically handicapped in respect of entire non-teaching post as per the cadre strength in the second respondent school and direct the second respondent to appoint the petitioner as a Junior Assistant in the second respondent school pursuant to the advertisement in Dinathanthi dated 29.1.2010.

3. According to the petitioner, he is a differently abled person suffering from 50% disability by dint of deformity in his left leg. Pursuant to the advertisement published on 29.1.2010, the petitioner applied for the post of Junior Assistant in the second respondent school on 8.2.2010 annexing all the requisite documents in proof of his educational qualification.

4. It is the case of the petitioner that as per Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1985, the second respondent is bound to reserve 3% of the total sanctioned posts of non-teaching staff for physically handicapped persons, but the respondent authorities have not complied with such mandatory requirement inasmuch as there is no indication in the advertisement qua reservation for physically handicapped persons.

5. It is stated that even though a Division Bench of this Court by order dated 13.10.2009 passed in W.P.No.28217 of 2008 directed the first respondent to give suitable directions to all the departments and institutions coming under his control to comply with the requirement of the said Act strictly, the said direction has not been complied with by the first respondent.

It is the specific case of the petitioner that the said act of the respondent authorities runs contrary to Section 33 of the Act and is also hit by Section 39 of the Act, which mandates that reservation of seats for physically handicapped persons will also apply to the second respondent, which is an aided institution. In this premise, the present writ petition is filed for the relief stated supra.

6. The stand taken by the second respondent is that the writ petitioner is a physically challenged person falling under Backward Class Community and he can be accommodated only if he succeeds in the interview under the reserved category for physically handicapped quota if the post is for reserved category as per G.O.Ms.No.87, dated 17.7.2008 read with G.O.Ms.No.200, dated 22.12.2006, G.O.Ms.No.241, dated 29.10.2007 and G.O.Ms.No.206, dated 6.11.2008. It is added that the school management cannot make any appointment at its own whims and fancies, since the authorities have to approve the appointment. It is further stated that already one P.Selvanayagi joined the post on 15.3.2010.

7. The respondent authorities, in one voice, submitted that they are strictly adhering to the provisions of the Act.

8. A Division Bench of this Court in Prof. I.Elangovan v. Government of Tamil Nadu, rep. by its Chief Secretary, Chennai and others, reported in (2008) 3 MLJ 481, held as under:

"10. Easily, employment rights of persons with disabilities covered by Chapter-VI of the Act containing Sections 32 to 41 (except Section 39 which relates to education) comprise the most empowering provisions of the Act as they yield the most tangible and substantial rights to persons with disabilities. Section 32 of the Act provides for identification of posts, Section 33 of the Act provides for reservation of posts and Section 36 thereof provides that in case a vacancy is not filled up due to non-availability of a suitable person with disability, the vacancy is to be carried forward in the succeeding recruitment year. The relevant provisions of the aforesaid sections read as under:

Section 32: Identification of posts which can be reserved for persons with disabilities: Appropriate Governments shall

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(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.

Section 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 shall be reserved for persons suffering from

(i) blindness or low vision,

(ii) hearing impairment and

(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.

Section 36: Vacancies not filled up to be carried forward: - Where in any recruitment year any vacancy under Section 33, cannot be filled up due to non-availability of a suitable person with 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 disability is not available, it may first be filled up by interchange among the three categories and only when there is no person with disability available for the post in the 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 three categories with the prior approval of the appropriate Government.

11. It is apparent from reading of the aforesaid provisions, that the appropriate Government is statutorily enjoined to appoint in every establishment such percentage of vacancies not less than 3% for persons with disabilities, of which 1% each shall be reserved for three categories mentioned in Section 33 of the Act. The term 'establishment' has been defined in Section 2(k) of the Act to mean 'a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956) and includes departments of a Government.'. Therefore, each department of the Government has to be treated as an 'establishment', and the Government is bound to reserve not less than 3% vacancies in an establishment in posts identified in accordance with Section 32 of the Act. There is no dispute that the present recruitment is in respect of Group 'C' and 'D' services and all the posts can be reserved for persons with disability.

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14. Undoubtedly, the Act has been enacted in order to give effect and implement the proclamation adopted at Beijing on 1st to 5th December, 1992 for providing full participation and equality of people with disabilities in the Asian and Pacific regions. Article 253 of the Constitution confers power upon Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. Under Article 253, in implementing a treaty, agreement or convention with any other country or countries (Entry 14 List I) or any other decision made at any international conference, association or other body (Entry 13 List I), the limitations imposed by Articles 245 and 246(3) are removed and the total field of legislation is open to the Union

Parliament. The importance attached to the treaties and international obligations is further emphasized by Article 51, which makes it a directive of State Policy to foster respect for international law and treaty obligations in dealings of organized people with one another. Therefore, the competency of the legislature of any State and exclusive power to make laws for the whole of the State or any part thereof with respect to any of the matters enumerated in List I in the 7th Schedule, referred to as the State list in the Constitution, itself is subject to the power of Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made in any international convention, association or other body.

15. Mr. H.M.Seervai, in his classic book 'Constitution Law of India' (4th Edition (Volume I) page 306) states that Article 253 of the Constitution appears to have been enacted in order to avoid the difficulties faced by Canada in implementing the international agreement or convention. In *A.G. for Canada v. A.G. for Ontario*, 1937 AC 326, the Privy Council struck down as ultra vires three labour Acts passed by the Dominion Parliament, which gave effect to the draft convention adopted by the International Labour Organisation in accordance with the treaty of Versailles and ratified by Canada. The Privy Council held that the Dominion could not merely by making promises to foreign countries clothe itself with legislative authority inconsistent with the Constitution which gave it birth, and as the impugned laws related to 'property and civil rights in the province' a subject of exclusive provincial legislative power under Section 92 (13) of B.N.A. Act, they were void. In other words, a power to implement a treaty did not include a power to legislate on a subject of exclusive provincial legislation. To prevent such a position arising in India, Article 253 enables Parliament to implement a treaty by law even if the subject matter of the law is a subject of exclusive State legislation.

16. In *Ref. By President of India under Article 143 (1)*, AIR 1960 SC 845, the Supreme Court explained the scope of Article 253 as follows: -

"The effect of Article 253 is that if a

treaty, agreement or convention with a foreign state deals with a subject with the competence of the State Legislature, the Parliament alone has, notwithstanding Article 246(3), the power to make laws to implement the treaty, agreement or convention or any decision made at any international conference, association or other body. In terms, the Article deals with legislative power thereby power is conferred upon the Parliament which it may not otherwise possess."

17. In *Maganbhai v. Union of India*, AIR 1969 SC 783, Shah, J., in his concurring judgment observed:

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"Article 253 occurs in Chapter I of Part XI of the Constitution which deals with legislative relations, Distribution of Legislative Powers. By Article 245 of the territorial operation of legislative power of the Parliament and the State Legislatures is delimited, and Article 246 distributes legislative power subject-wise between the Parliament and the State Legislatures. Articles 247, 249, 250, 252 and 253 enact some of the exceptions to the rule contained in Art.246. The effect of Art.253 is that if a treaty, agreement or convention with a foreign state deals with a subject within the competence of the State Legislature, the Parliament alone has, notwithstanding Article 246(3), the power to make laws to implement the treaty, agreement or convention or any decision made at any international conference, association or other body. In terms, the Article deals with legislative power: thereby power is conferred upon the Parliament which it may not otherwise possess."

18. In *S.Jagannath v. Union of India*, 1997 (2) SCC 87, a two-Judge Bench of the Supreme Court held that the Environment (Protection) Act, 1986, being a Central Legislation, has overriding effect. The Environment (Protection) Act, 1986 has been enacted under Entry 13 List I of Schedule VII of the Constitution of India. The preamble to the Act clearly states that it was enacted to implement the

decisions taken at the United Nations' Conference on the Human Environment held at Stockholm in June 1972. Parliament has enacted the Act under Entry 13 of List I Schedule VII read with Article 253 of the Constitution of India. The CRZ Notification having been issued under the Act shall have overriding effect and shall prevail over the law made by the legislatures of the States. These observations were made while adverting to the question as to whether the provisions of the State legislations including that of the State of Tamil Nadu regulating the costal aquaculture industries set up in the costal areas were required to be in conformity and in consonance with CRZ Notification issued by the Government of India under Section 3(3) of the Environment (Protection) Act, 1986. The Supreme Court held that the CRZ Notification shall have overriding effect and shall prevail upon the State Legislations.

19. In *Perambaduru Murali Krishna and Others v. State of Andhra Pradesh and Others*, 2005 1 PDD (CC) 231, a Division Bench of the Andhra Pradesh High Court was concerned with the State Rule which did not provide for 1:1:1 reservation for visually handicapped, hearing handicapped and orthopaedically handicapped candidates, though 3% reservation was provided under the Rules. The Division Bench held that the provisions of Section 33 of the Act would prevail over the A.P. State and Subordinate Service Rules insofar as providing 1:1:1 reservation in favour of the persons with disabilities in the services of the State. The following observations of the Division Bench are pertinent: - (Paras. 30 & 37)

"30. The heart of the Indian Federal Constitution is distribution of legislative powers between the Union Parliament on one hand and Provincial Legislatures on the other hand. Laws of both actual and potential have been separated into certain classes and those classes respectively are assigned either to the Central or to the Provincial authority. As has been observed, Article 253 of the Constitution of India makes an exception to that general rule and but for the exception so made, the Parliament could not legislate as to those classes of subjects, which have been

assigned exclusively to the Provincial legislation.

37. The division of powers jurisprudence is replete with instances where the subjects in one aspect and for one purpose fall within the Union List, may in another aspect and for another purpose fall within the State List. Under such situation, there may be both a valid federal law and valid provincial law directed to the same persons concerning the same things, but require from them different courses of conduct and thus having certain different effect. In case of two enactments called for inconsistent behaviour from the same people, they are in conflict or in collusion and both cannot be obeyed. In these circumstances, the doctrine of dominion paramountcy would be applicable and the federal law is to prevail and the provincial one becomes inoperative and need not be observed. The provincial law remains under suspension so long as there is a federal law inconsistent with the provincial law. Thus, it is a principle of our Constitution that in the event of collusion between the federal law and provincial law, each valid, the federal features of the former law are considered in the last analysis more important than the provincial features of law. The doctrine of 'dominion paramountcy' is inbuilt into Article 253 of the Constitution of India. It would be legitimate to presume that our founding fathers were actually aware of the complexities and accordingly, incorporated Article 253 in Part XI of the Constitution. In the light of this Article, it is evident that the situation similar to the one arising in Canada by virtue of 1937 decision afore mentioned may not arise."

20. We have therefore no hesitation to hold that the provisions of Section 33 read with Section 2(k) of the Act would prevail over the Tamil Nadu State and Subordinate Service Rules and the respondents are duty bound to provide reservation of not less than 3% in every establishment i.e., department for persons with disabilities in accordance with Section 33 of the Act.

21. On behalf of the TNPSC, the charts showing the

vacancy positions, as per Section 33 read with Section 2(k) of the Act, are filed on record. As per the charts 80 vacancies are liable to be reserved for the post of Typist and 8 vacancies for the post of Steno-Typist for persons with disability under Notification/ Advertisement No.135. As regards, Notification No.142, 99 vacancies are liable to be filled up from among the persons with disabilities."

9. The Hon'ble Supreme Court in Union of India and another v. National Federation of the Blind and others, reported in (2013) 10 SCC 772, referred to the essentiality of inclusion of people with disabilities in employment opportunities and held as under:

"49. Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community.

50. The Union of India, the State Governments as well as the Union Territories have a categorical obligation under the Constitution of India and under various International treaties relating to human rights in general and treaties for disabled persons in particular, to protect the rights of disabled persons. Even though the Act was enacted way back in 1995, the disabled people have failed to get required benefit until today.

51. Thus, after thoughtful consideration, we are of the view that the computation of reservation for persons with disabilities has to be computed in case of Group A, B, C and D posts in an identical manner viz., "computing 3% reservation on total number of vacancies in the cadre strength" which is the intention of the legislature. Accordingly, certain clauses in the OM dated 29.12.2005, which are contrary to the above reasoning are struck down and we direct the appropriate Government to issue new Office Memorandum(s) in consistent with the decision rendered by this Court.

52. Further, the reservation for persons with

disabilities has nothing to do with the ceiling of 50% and hence, Indra Sawhney (supra) is not applicable with respect to the disabled persons.

53. We also reiterate that the decision in R.K. Sabharwal (supra) is not applicable to the reservation for the persons with disabilities because in the above said case, the point for consideration was with regard to the implementation of the scheme of reservation for SC, ST & OBC, which is vertical reservation, whereas reservation in favour of persons with disabilities is horizontal.

54. In our opinion, in order to ensure proper implementation of the reservation policy for the disabled and to protect their rights, it is necessary to issue the following directions:

(i) We hereby direct the appellant herein to issue an appropriate order modifying the OM dated 29.12.2005 and the subsequent OMs consistent with this Court's Order within three months from the date of passing of this judgment.

(ii) We hereby direct the "appropriate Government" 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 today and implement the same without default.

(iii) The appellant herein shall issue instructions to all the departments/public sector undertakings/ Government companies declaring that the non observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and Nodal Officer in department/public sector undertakings/ Government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default."

10. The respondent authorities have taken a stand that pursuant to the said advertisement one P.Selvanayagi has been appointed and at the present stage the recruitment process may

not be altered.

11. With regard to the above plea, it is apposite to refer to the decision of the Hon'ble Supreme Court in Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation, reported in (2010) 5 SCC 459, wherein, it has been held as under:

" 8. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate - Collector, Land Acquisition, Anantnag v. Mst. Katiji, 8 (1987) 2 SCC 107, N. Balakrishnan v. M. Krishnamurthy, 9 (1998) 7 SCC 123 and Vedabai v. Shantaram Baburao Patil, 10 (2001) 9 SCC 106. In dealing with the applications for condonation of delay filed on behalf of the State and its agencies/instrumentalities this Court has, while emphasizing that same yardstick should be applied for deciding the applications for condonation of delay filed by private individuals and the State, observed that certain amount of latitude is not impermissible in the latter case because the State represents collective cause of the community and the decisions are taken by the officers/agencies at a slow pace and encumbered process of pushing the files from table to table consumes considerable time causing delay - G. Ramegowda v. Spl. Land Acquisition Officer, 11 (1988) 2 SCC 142, State of Haryana v. Chandra Mani, 12 (1996) 3 SCC 132, State

of U.P. v. Harish Chandra, 13 (1996) 9 SCC 309, State of Bihar v. Ratan Lal Sahu, 14 (1996) 10 SCC 635, State of Nagaland v. Lipok Ao, 15 (2005) 3 SCC 752, and State (NCT of Delhi) v. Ahmed Jaan, 16 (2008) 14 SCC 582."

The Hon'ble Supreme Court in the aforesaid decision emphatically held that the law of limitation is elastic enough to enable the courts to apply the law in a meaningful manner which subserves the ends of justice.

12. While pendency of the writ petition, this Court by order dated 29.10.2018, the Secretary, Department of School Education, Fort St. George, Chennai-9 was suo motu impleaded as a party / 4<sup>th</sup> respondent in this writ petition. This Court directed the Secretary, Department of School Education to file a report in respect of the appointment of the Physically Handicapped persons by applying reservation under the physically handicapped quota from the year 2008 to 2017 on or before 05.12.2018.

13. Pursuant to the above direction given by this Court by order dated 29.10.2018, the 4<sup>th</sup> respondent Secretary to Government, Department of School Education, filed an affidavit dated 20.12.2018 stating that the communal reservation as well as reservation for the persons with disabilities in the teaching as well as non-teaching posts are followed while making appointments by the respective managements and the same is ensured by the concerned educational authorities, accordingly approval of those appointments made by the managements.

14. The 4<sup>th</sup> respondent Secretary also states that during the years 2008-2017 there are 6 teaching posts and 1 non-teaching post have been filled up under the 3% reservation with disabled persons. It is further submitted that after 2017-2018 there are no backlog vacancies are available in respect of persons with disabilities. The 4<sup>th</sup> respondent Secretary also clearly states that the Department is taking utmost care in following the norms of reservation for the person with disabilities in appointments without any deviation.

15. The affidavit of the 4<sup>th</sup> respondent dated 20.12.2018 in paragraph-6 and 7 are as follows:

"6. It is further submitted that in the case of aided non minority schools the communal reservation as well as reservation for the persons with disabilities in the teaching as well as non-teaching posts are followed while making appointments by the respective managements. The same is ensured by the concerned educational authorities while according

approval for those appointments made by the managements.

7.It is further submitted that during the years 2008-2017 6 teaching posts and one non teaching post (Lab Assistant) have been filled up under the 3% reservation with persons with disabilities. It is further submitted that after 2017-2018 there are no backlog vacancies are available in respect of persons with disabilities. The department is taking utmost care in following the norms of reservation for the person with disabilities in appointments without any deviation."

16.The Hon'ble Division Bench of this Court reported in (2008) 3 MLJ 481 has clearly mentioned that the Provisions of Section 33 read with Section 2(k) of the Act, 1995, would prevail over the Tamil Nadu State and Subordinate Service Rules and the State Government is duty bound to provide reservation of not less than 3% in every establishment i.e., department for persons with disabilities in accordance with Section 33 of the Act.

17.The learned Single Judge of this Court in W.P.No.392 of 2010 dated 04.03.2011 has passed an order directing the Secretary to Higher Education as well as the State Commissioner for the differently abled persons to identify the vacancies in teaching and non-teaching posts as per the Government Orders passed from time to time and take steps to fill up the backlog vacancies and the direction also issued to the 2<sup>nd</sup> respondent University namely, Bharathiyar University, Coimbatore to take steps to fill up the backlog vacancies and submit a report within a period of three weeks from the date of receipt of a copy of the order, to the Commissioner of Differently abled persons, Department of Social Welfare, Chennai.

18.The Hon'ble Supreme Court has passed an order dated 08.10.2013 in Civil Appeal No.9096 of 2013 in para-54 as follows:-

"54.In our opinion, in order to ensure proper implementation of the reservation policy for the disabled and to protect their rights, it is necessary to issue the following directions:

(i) We hereby direct the appellant herein to issue an appropriate order modifying the OM dated 29.12.2005 and the subsequent OMs consistent with this Court's Order within three months from the date of passing of this judgment.

(ii) We hereby direct the "appropriate Government" 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 today and implement the same without default.

(iii) The appellant herein shall issue instructions to all the departments/public sector undertakings/Government companies declaring that the non observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and Nodal Officer in department/public sector undertakings/ Government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default."

19. In fact, the Hon'ble Supreme Court in the order in Civil Appeal No.9096 of 2013 very clearly held that the appellant in the above case namely, Union of India, shall issue suitable directions to all the Departments/Public Sector undertakings/Government companies declaring that the non observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and Nodal Officer in Department/Public Sector undertakings/Government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default.

20. Even after the order passed by the Hon'ble Supreme Court in the Civil Appeal dated 08.10.2013, proper implementation of the physically handicapped persons was not done by the respondents as a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, the reason assigned by the respondents for not earmarking in the advertisement the posts for persons with disability in accordance with the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act and not appointing the petitioner without giving any reason to sustain.

21. In fact, this Court put a question to the learned Additional Government Pleader whether the Education Department has properly applied the reservation for persons with disabilities, but except the backlog vacancies in the affidavit filed by the 4<sup>th</sup> respondent Secretary to Government, Education Department has not disclosed about the appointment of physically handicapped persons by applying the reservation for the persons with disabilities at 3% in accordance with Section 33 of the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, in each and every year.

\* 22. but Mr. A.Rajaperumal, learned Additional Government Pleader for the 1st respondent has informed that if this Court has granted time or directing the other Government Pleaders who appeared for the other Departments can very well to produce the particulars in respect of following the scheme of reservation for the persons with disabilities from all other departments. Hence, he prayed this Court for time, but this Court feels that suitable direction could be issued to the Chief Secretary of the Government of Tamil Nadu will meet the ends of Justice.

23. Therefore, it is made clear that not only in the Education Department, but also in the other Departments the Government have not followed the scheme of reservation for the persons with disabilities under 3% quota in accordance with Section 33 of the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act.

24. Time and again, this Court and the Hon'ble Apex Court in the judgments cited supra, particularly the Hon'ble Supreme Court very clearly directed in Civil Appeal No.9096 of 2013 dated 08.10.2013 to follow the scheme of reservation for the persons with disabilities in all the Departments and the non observations of the scheme of reservation for the persons with disabilities should be considered as the Act of non-obedience. In fact the Hon'ble Division Bench of this Court in the case reported in (2008) 3 MLJ 481 directed that the Act would prevail over the Tamil Nadu State and Subordinate Service Rules and the State Government is duty bound to provide reservation of less than 3% in every establishment was also not complied with.

25. The order of the Hon'ble Supreme Court made in Civil Appeal No.9096 of 2013 dated 08.10.2013 and the Hon'ble Division Bench of this Court are squarely applicable in all the Departments of the Government of Tamilnadu also. Both the learned counsel for the petitioner and the respondents has clearly pointed out that the scheme for reservation for the persons with disabilities has been followed not only in the Education Department, but all other Departments also. Number of orders were passed by this Court and the Hon'ble Apex Court, but even then it has not been properly followed the scheme of reservation for the persons with disabilities. Therefore, I am inclined to pass appropriate orders by directing the Chief Secretary of the Government of Tamilnadu, in the interest of justice and the welfare of the persons with disabilities to issue suitable directions to all the Departments for following the scheme of reservation for the persons with disabilities under 3% quota in accordance with Section 33 of the provisions of Persons with Disabilities (Equal Opportunities, Protection

of Rights and Full Participation) Act.

26. In the result:

(a) the writ petition is allowed by directing the 4<sup>th</sup> respondent Department of School Education, Chennai-9 to provide 3% reservation of physically handicapped persons in respect of entire non-teaching posts as per the cadre strength in the 2<sup>nd</sup> respondent School with further direction to the 4<sup>th</sup> respondent directing the 2<sup>nd</sup> respondent School namely, Management, NGNG Higher Secondary School, Reddiyarur Post, Pollachi Taluk, Coimbatore District to appoint the petitioner as a Junior Assistant either considering in the advertisement made in Daily Thanthi dated 29.10.2010 or appoint him afresh, without disturbing the position of persons, who have already been appointed;

(b) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order;

(c) the Chief Secretary, State of Tamilnadu, Chennai is directed to issue suitable instructions to all the Departments / Public Sector undertakings / Government Corporations to scrupulously follow the scheme of reservation for persons with disabilities by computing 3% reservation on total number of vacancies in the cadre strength as per the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, by issuing proper circular within a period of eight weeks from the date of receipt of a copy of this order;

(d) the Chief Secretary, State of Tamilnadu, Chennai also directed to issue the circular to all the Departments / Public Sector undertakings / Government Corporation to take steps to follow the scheme of reservation for persons with disabilities under the 3% quota and to inform periodically to the Commissioner of Differently abled persons, Department of Social Welfare, Chennai;

(e) the Commissioner of Differently Abled Persons, Department of Social Welfare, Chennai, is hereby directed to follow this order by making representation to all the Departments and to get particulars whether the scheme of reservation for persons with disabilities as per Section 33 of Provisions of Persons with Disabilities (Equal

Opportunities, Protection of Rights and Full Participation) Act, are followed or not?  
(f) No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar  
Dated: 11/03/2019

**Sd/-Assistant Registrar(CCC)**  
**Amended as per the Order**  
**dated 15.03.2019 made in**  
**WP.No. 5856 of 2010**

//True Copy//

Sub Assistant Registrar

vs

To

1. The Secretary,  
Government of Tamil Nadu,  
Department of Higher Education,  
Fort St. George, Chennai 600 009.
2. The Secretary,  
Department of School Education,  
Fort St. George, Chennai - 600 009.
3. The Chief Secretary,  
The Government of Tamil Nadu,  
Fort St. George, Chennai - 600 009.
4. The Commissioner of Differently  
abled persons Department,  
Department of Social Welfare,  
Chennai

**To be Substituted the  
order already despatched  
on 13.03.2019**

+1cc to Mr.Balan Haridas, Advocate, SR No.21867  
**+1cc to Mr.Profex Associates, Advocate, S.R.No. 24524**  
**+1cc to Mr.Kaavya Silambanan Associates,Advocate, S.R.No. 22951**

W.P.No.5856 of 2010  
and  
M.P.No.1 of 2010

LN(CO)  
SSM(11/03/2019)  
GN(29/03/2019)