HIGH COURT OF MADHYA PRADESH : JABALPUR

(Division Bench)

Writ Petition No. 19393/2019

Shivendra Singh Parihar & Ors.
Versus
The State of Madhya Pradesh & Ors.

Writ Petition No. 21652/2019

Samant Singh Senger
Versus
The State of Madhya Pradesh & another

Writ Petition No. 21693/2019

Mahendra Kumar Kushwaha & another
Versus
The State of Madhya Pradesh & another

Writ Petition No. 21695/2019

Kamlesh Patil
Versus
The State of Madhya Pradesh & another

Writ Petition No. 23707/2019

Diwakar Singh Tomar
Versus
The State of Madhya Pradesh & Ors.

Writ Petition No. 21134/2019

Ravi Shankar Pathak
Versus
The State of Madhya Pradesh & another

Writ Petition No. 23035/2019

Babita Rathore
Versus
The State of Madhya Pradesh & another

Writ Petition No. 23118/2019

Maan Singh
Versus

The State of Madhya Pradesh & Ors.
Writ Petition No. 20105/2019

Praveen Mantri
Versus
The State of Madhya Pradesh & another

Writ Petition No. 20549/2019

Dr. Mahendra Kumar Mishra
Versus
The State of Madhya Pradesh & Ors.

Writ Petition No. 21896/2019

Anoop Kumar Singh & another
Versus
The State of Madhya Pradesh & Ors.

Writ Petition No. 23358/2019

Chandrabhan Makode
Versus
The State of Madhya Pradesh & another

Writ Petition No. 25597/2019

Arun Kumar Sinde
Versus
The State of Madhya Pradesh & another

Writ Petition No. 22800/2019

Krishna Kumar & another
Versus
The State of Madhya Pradesh & Ors.

Writ Petition No. 22009/2019

Prakash Kumar & another
Versus
The State of Madhya Pradesh & Ors.

Writ Petition No. 22023/2019

Ashok Kumar & Ors.
Versus
The State of Madhya Pradesh & Ors.

Writ Petition No. 25921/2019

Bakeel Singh Kaushal
Versus
The State of Madhya Pradesh & Ors.

Writ Petition No. 25923/2019

Dr. Swapnila Chouhan
Versus
The State of Madhya Pradesh & Ors.

Writ Petition No. 25925/2019

Dinesh Kumar Sinha Shambhratna
Versus
The State of Madhya Pradesh & Ors.

Writ Petition No. 23052/2018

Sheeba Azhar
Versus
The State of Madhya Pradesh & another

Writ Petition No. 29036/2019

Meenu Saket
Versus
The State of Madhya Pradesh & Ors.

Writ Petition No. 140/2020

Deepak Johnson
Versus
The State of Madhya Pradesh & Ors.

Writ Petition No. 940/2020

Teerath Jaiswal
Versus
The State of Madhya Pradesh & Ors.

CORAM :
Hon'ble Shri Justice Ajay Kumar Mittal, Chief Justice
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

Appearance

Shri S.K. Rungta, Senior Advocate, Shri Naman Nagrath, Senior Advocate with Shri K.C. Ghildiyal, Shri Nitin Agrawal, Shri Swapnil Ganguli and Shri K.V. S. Sunil Rao, Shri Amit Seth, Shri K.S.Jha, Shri S.M. Guru, Shri Pawan Bansal, Shri Ashish Choubey, Shri Sailesh Tiwari, Shri Abhinav Shrivastava, Shri Shivam Mishra, Shri Aditya Khandekar, Shri Siddharth Sharma, Shri Gopi Chourasia, Shri Ashish Choubey, Shri Bramha Nand Pandey, Jubin Prasad, Shri B.P. Pathak, Shri Rahul Rawat and Shri Rajnish Sharma, Advocates for the petitioners.

Shri Shashank Shekhar, Advocate General with Shri Himanshu Mishra, Government Advocate for the respondent no.1/State.

Shri Prashant Singh, Senior Advocate with Smt. Vineeta Sharma, and Shri Anshul Tiwari, Advocate for the respondent no.2.

Whether approved for reporting ? Yes/No

O R D E R

(Jabalpur, dated: 29-04-2020)

Per: Vijay Kumar Shukla, J.-

The common issue is raised in this bunch of petitions, therefore, they were heard analogously and are being disposed of by a common order. For the sake of convenience, the facts are noted from the **W.P. No. 19393/2019 (Shivendra Singh & Ors. Vs. The State of M.P. & Ors.)**. In these petitions a challenge is made to revised advertisement/corrigendum dated 19.08.2019 issued by the respondent no.2, M.P. Public Service Commission (for brevity, "MPPSC"), whereby number of vacancies earlier advertised for the appointment of persons with disabilities for the post of Assistant Professor has been reduced.

2. The petitioners are persons suffering from blindness and they applied for selection to the post of Assistant Professors in respective subjects and also claimed the benefit of reservation granted to persons with disabilities

under Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act, 1995 [hereinafter referred to as "the Act 1995"] and Section 34 of the Rights of Persons with Disabilities Act 2016 [for short, "the Act 2016"].

3. The Parliament enacted Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 which came into force from 1996. Section 33 of the said Act contained a scheme of reservation in jobs for persons with disabilities. According to which every appropriate Government was obliged to appoint not less than 3% vacancies in every establishment of which 1% each was to be reserved for persons with blindness and low vision, persons with hearing impairment and persons with locomotor disability and cerebral palsy respectively. The said statutory provision is reproduced hereinbelow:

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

It is also apt to refer Section 36 of the Act 1995 which is extracted hereunder :

> ***"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 by interchange among the three 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 three categories with the prior approval of the appropriate Government."*

4. The respondent No.1/State made a reservation to the extent of 6% for persons with disabilities in compliance of the said statutory provision which was being equally distributed to the extent of 2% each, in favour of persons with blindness and low vision, persons with hearing impairment, and persons with locomotor disability and cerebral palsy respectively.

5. It is further submitted that the respondent State issued office memorandum bearing No.F8-2/96AAPR/AK dated 30.05.1997 providing for 6% reservation for persons with disabilities in the vacancies filled by direct recruitment falling in 2nd , 3rd and 4th category of posts. The office memorandum also provided distribution of the said vacancies to the extent of 2% each in favour of persons suffering from blindness and low vision, persons suffering from hearing impairment and persons suffering from locomotor disability or cerebral palsy.

6. The State further issued office memorandum No. F8-

4/2001/Aapr/ak dated 30.06.2001 clarifying that the principle of carry forward and interchange will apply in respect of reserved vacancies or persons with disabilities in accordance with Section 36 of the Act 1995.

7. It is submitted by Shri S.K. Rungta, Sr. Advocate for the petitioners that the said circulars made the reservation of persons with disabilities wrongly by distributing the same again for SC/ST disabled, OBC disabled and unreserved disabled. Both the said office memorandums are contrary to the judgment of Hon'ble Apex Court in ***Indira Sawhney Vs. The Union of India (1992 Supp(3) SCC 217)*** where it has been categorically held that reservation for persons with disabilities is horizontal and cuts across the caste lines and the same is made under Article 16(1) and not under Article 16(4) of the Constitution of India. The relevant extract of the said judgment is reproduced hereinbelow:

> *"95……. all reservations are not of the same nature. 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 reserations cut across the vertical reservations – what is call inter-locking 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 S.C. category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) 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 – an should remain – the same……"*

> *"430 If, however, clause (4) is treated as an exception to clause (1), an important but unintended consequence, may follow. There would be no other classification permissible under Clause (1), and clause (4) would be deemed to exhaust all the exceptions that can be made to clause (1). It would then not be open to make provision for reservation in services in favour of say, physically handicapped, army personnel and freedom fighters and their dependents, project affected persons, etc. The classification made in favour of persons belonging to these categories is not hit by Clause (2). Apart from the fact that they cut across all classes, the reservations in their favour are made on considerations other than that of backwardness within the meaning of clause (4). Some of them may belong to the backward classes while some may belong to forward classes or classes which have an adequate representation in the services. They are however, more disadvantaged in their own class whether backward or forward. Hence, even on this ground it will have to be held that Article 16(4) carves out from various classes for whom reservation can be made, a specific class, viz., the backward class of citizens, for emphasis and to put things beyond doubt."*

Thus, these Office Memorandums are not in accordance with the said judgment of Hon'ble Apex Court. It is submitted that the reservation of 6% to persons with disabilities cannot be distributed among reserved and unreserved classes as has been sought to be done by the said circular. It is also submitted that the Hon'ble Apex Court in the case of ***Union of India and another Vs. National Federation of Blind and others (2013)10 SCC 722*** also reiterated this position and held that reservation of persons with disabilities is horizontal and therefore, there is no relation with the caste based reservations.

8. In the year, 2011 respondent no.1/State, vide Gazette Notification No. F2/13/2011/26/1, dated 21.09.2011, not only identified the post of Assistant Professor in different subjects as suitable for different disabilities but also notified the number of reserved vacancies in different subjects for different categories of disabilities against the said 2% reservation for each of

the aforesaid categories of disabilities. It is admitted position that from 1996 until the recruitment in question, no recruitment process has been undertaken to fill up the vacancies which ought to have been reserved for persons with disabilities and admitted in the said notification of 2011. It is not disputed that the State Government first time identified the posts in the year 2011.

9. The respondent no.1/State originally advertised number of vacancies for the post of Assistant Professor in different subjects vide original advertisement No. 07/2017 dated 12.12.2017 in which the respondent no.1/State notified the vacancies under three following heads for all categories of candidates including persons with disabilities, SC/ST/OBC & Women:

i) Backlog Vacancies
ii) Vacancies caused by promotion/retirement
iii) Newly created vacancies.

10. A perusal of the advertisement dated 12.12.2017 shows that a total of 38 vacancies have been notified as reserved backlog vacancies for persons with visual impairment which have been distributed in different subjects as per the following details:

Name of the post/subject	Total No. of vacancies unfilled	No. of vacancies reserved.		
		OH	VH	HH
Botany	9	0	0	0
Chemistry	40	0	3	2
Commerce	90	3	5	4
Dance	3	0	0	0
Economics	90	2	4	3
English	99	2	5	5
Geography	6	0	0	0
Geology	9	0	0	0

Hindi	75	2	5	5
Home Science	27	2	2	2
Law	29	1	1	1
Maths	47	1	2	2
Military Science	2	0	0	0
Music	4	0	0	0
Philosophy	8	0	0	0
Physics	6	2	2	2
Political Science	79	0	4	4
Psychology	6	0	0	0
Public Administration	1	0	0	0
Sociology	57	1	3	3
Urdu	6	0	0	0
Zoology	14	0	2	0
TOTAL	707	17	38	33

It is submitted that the backlog vacancies and vacancies other than the backlog vacancies notified in the said advertisement as reserved for the blind, have wrongly been given in the aforementioned subjects which are actually not suitable to be utilized for the said posts. It is further submitted that as per settled legal position and statutory provision, 2% vacancies for persons with visual impairment have to be given in the subjects identified for the blind and not in any other subject. The said advertisement was modified by subsequent corrigendum advertisements dated 12.04.2018 & 25.04.2018. It is submitted that the reserved vacancies for persons with disabilities including blind under different heads were increased and the same were not decreased. Accordingly, the petitioners being eligible for the post of Assistant Professor in respective subjects applied against the said advertisements and participated in the selection process and were declared successful and,

therefore, they were called for verification of documents.

11. The respondents not only finalized the select list based on the vacancies notified as reserved for persons with disabilities in the advertisement dated 12.12.2017 read with corrigendum dated 12.04.2018 and 25.04.2018, but also carried on the documents verification in some cases.

12. Some non-disabled persons filed a writ petition ***W.P. No. 20649/2018 (Ghanshyam Choksey Vs. The State of M.P. & another)*** challenging the number of vacancies reserved for persons with disabilities alleging that the same is in excess of 6% reservation. Though the respondents in the said petition supported their calculation of reserved vacancies in the aforementioned advertisement, however, the learned Advocate General appearing on behalf of the respondents/State during course of hearing on 17.06.2019 on instructions made a statement, to the effect, that there are some discrepancies in the vacancies reserved for persons with disabilities, and agreed to recalculate/revise the same in respect of persons with disabilities. He also made a statement that the select list prepared on the basis of aforementioned advertisement qua persons with disabilities be treated as non-est. It is submitted that none of the petitioners and other disabled persons were parties in those proceedings and therefore, they were deprived of the opportunity to protect their interest.

13. Thereafter, the respondent/State has revised the vacancies for persons with disabilities and also revised the select list, reducing the number of backlog vacancies notified as reserved for persons with disabilities in

advertisement No. 07/2017 read with corrigendum dated 12.04.2018 and 25.04.2018. A perusal of the impugned revised vacancy list on the basis of which the original select list has been revised reveals that the reserved backlog vacancies have been completely taken out from the reserved vacancies for persons with disabilities and also the vacancies have not been calculated against the total number of vacancies in the cadre strength even subject-wise. It is submitted that in the said impugned advertisement, persons with blindness have been given reservation as per the following details:

Botany	:	4
Chemistry	:	7
Commerce	:	6
Economics	:	5
English	:	6
Geography	:	2
Hindi	:	5
History	:	4
Home Science	:	2
Law	:	3
Mathematics	:	4
Physics	:	6
Pol. Science	:	5
Sanskrit	:	1
Sociology	:	4
Urdu	:	1

Zoology	:	5
Total	:	70

It is submitted that in the first place, by the impugned revised advertisement pursuant to the said order, the respondent/State has refused to give backlog of reserved vacancies to persons with disabilities, which were earlier notified in clear violation of the aforementioned judgments of the Apex Court and Section 36 of the Act 1995 and Section 34 of the Act 2016. Secondly, the respondents State has given substantial number of reserved vacancies for the blind in those subjects which are not identified as suitable for the blind persons by the Government of India notification and also for acquiring eligibility for being Assistant Professor in the said subject, blind persons are not allowed admission in the respective courses.

Thus, both on account of excluding backlog of vacancies and reserving vacancies in those subjects in which blind persons cannot apply, the respondents/State has deprived the petitioners and other eligible blind candidates from the enjoyment of the benefit of scheme of reservation as contained in Section 33 of Act 1995 and now under Section 34 of Act 2016.

14. The learned counsel for the petitioners strenuously urged that the action of the respondents is contrary to the statutory provisions. It is further stated that the scheme of reservation in all groups of posts came into force from 1996 when Section 33 of the Act 1995, already quoted hereinabove, made it obligatory, that a minimum of 3% vacancies have to be reserved by every establishment of every appropriate Government which include the respondent No.1/State as well. Section 36 of the said Act also contains a

provisions of carry forward.

The said Act has been replaced by the Act 2016. Section 34 of the said Act is identical and similar to the scheme of reservation as contained in sections 33 and 36 of the Act of 1995 which is extracted hereinbelow:

> ***Section 34 :-*** *Reservation:-(1) Every appropriate Government shall appoint in very Government establishment, not less than 4% of the total number of vacancies in the cadre strength in each group of posts meant to the filled with persons with benchmark disabilities under Clause (a), (b) and (c) and one percent for persons with benchmark disabilities under clauses (d) and (e) namely :-*
>
> *(a) Blindness and low vision;*
> *(b) Deaf and hard 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 clause as to d including deaf blindness in the post 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,*
>
> *Provide further that the appropriate Government in consultation with the Chief Commissioner or the State Commissioner, as the cause may be, may, having regard to the type of work carried out in any Government Establishment, by notification and subject to such conditions, of any, as may be specified in such notification 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 interchanged 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.

Provide 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."

15. Thus, it is luminescent from the aforementioned statutory provision, that the stand of the respondents if accepted, would negate the principle of carry forward and also the method of computation of vacancies out of total number of vacancies in the establishment which is the intention of the Legislature. Moreover, the respondents admittedly worked out the backlog of vacancies in the year, 2011 and notified the same for the posts in question, vide the aforementioned gazette notification. It is also an admitted position that the respondents have not undertaken any recruitment drive to fill up the backlog of vacancies against the posts in question from the year 1996 till the present recruitment, which is the subject-matter of the present writ petition attracting the aforementioned principle of carry forward of vacancies from 1996 till date and also the reservation against vacancies caused by promotion/retirement and newly created vacancies. If the stand of the respondents is accepted, it would permit the respondents to postpone implementation of the scheme of reservation indefinitely and at subsequent recruitment provide the reservation against the vacancies advertised ignoring the principle of carry forward and the computation of reservation against the total number of vacancies in the cadre as embodied in the statutory provisions. In addition, the stand of the respondent is also contrary to the Rules made by

the respondent State for implementing the provisions of the Act 2016.

16. The learned counsel for the petitioner has further referred to the judgment passed by the Division Bench of the Delhi High Court in ***W.P. No. 5429/2018*** dealing with regard to the implementation of reservation for person with disabilities in Civil Services including Indian Administrative Services (IAS). The Division Bench of the High Court of Delhi held that the reservation has to be computed with reference to the vacancies since 1996 and on that basis directed the Government of India to appoint the petitioner who was blind by computing the vacancies in the Indian Administrative Services since 1996 and even divert the vacancies from non disabled categories, unless in the past recruitment the vacancies which ought to have been reserved for persons with disabilities, have been given to non-disabled. The said judgment was upheld by the Apex Court in the case of ***Government of India and another Vs. Ravi Prakash and others (2010)7 SCC 626***. The relevant extract of the said judgment is reproduced as under:

> *"15. Although, the Delhi High Court has dealt with the aforesaid questions, we wish to add a few observations of our own in regard to the objects which the legislature intended to achieve by enacting the aforesaid Act. The submission made on behalf of the Union of India regarding the implementation of the provisions of Section 33 of the Disabilities Act, 1995, only after identification of posts suitable for such appointment, under Section 32, thereof, runs counter to the legislative intent with which the Act was enacted. To accept such a submission would amount to accepting a situation where the provisions of Section 33 of the aforesaid Act could be kept deferred indefinitely by bureaucratic inaction. Such a stand taken by the petitioners before the High Court was rightly rejected. Accordingly, the submission made on behalf of the Union of India that identification of Grade `A' and `B' posts in the I.A.S. was undertaken after the year 2005 is not of much substance. As has been pointed out by the High Court, neither Section 32*

> *nor Section 33 of the aforesaid Act makes any distinction with regard to Grade `A', `B', `C' and `D' posts. They only speak of identification and reservation of posts for people with disabilities, though the proviso to Section 33 does empower the appropriate Government to exempt any establishment from the provisions of the said Section, having regard to the type of work carried on in any department or establishment. No such exemption has been pleaded or brought to our notice on behalf of the petitioners.*
>
> *16. It is only logical that, as provided in Section 32 of the aforesaid Act, posts have to be identified for reservation for the purposes of Section 33, but such identification was meant to be simultaneously undertaken with the coming into operation of the Act, to give effect to the provisions of Section 33. The legislature never intended the provisions of Section 32 of the Act to be used as a tool to deny the benefits of Section 33 to these categories of disabled persons indicated therein. Such a submission strikes at the foundation of the provisions relating to the duty cast upon the appropriate Government to make appointments in every establishment (emphasis added).”*

17. The stand of the respondents is also contrary to the judgment of Division Bench of High Court of Delhi upheld by the Apex Court. Further, the Supreme Court in a recent decision dated 15.01.2020 in ***Siddaraju Vs. State of Karnataka & Ors. (Civil Appeal No. 1567/2017)*** has reiterated the same view and held that the Central Government and the State Governments are duty-bound to follow the judgment in *stricto sensu*. The relevant extract is reproduced herein below:

> “10. After hearing learned counsel appearing on behalf of all the parties including the learned Additional Solicitor General, we are of the view that the judgment of this Court cannot be faulted when it stated that Indra Sawhney dealt with a different problem and, therefore, cannot be followed.
> 11. We may also note that review petitions were filed and have since been dismissed against both the 2013 and 2016 judgments. Consequently, the reference stands answered by stating that the 2013 judgment as clarified in National Federation of the Blind vs. Sanjay Kothari, Secy. Deptt. Of Personnel and Training, 2015 (9) Scale 611 and the judgment in Rajeev Kumar Gupta & Others vs. Union of

> India & Others (2016) 13 SCC 153 case will bind the Union and the State Governments and must be strictly followed notwithstanding the Office Memorandum dated 29.12.2005, in particular."

18. Submissions of the learned counsel for the petitioners are that the respondents acted contrary to the statutory provisions as contained under Section 33 of the Act 1995 by not providing the quota for physically handicapped whereby it was obligatory for them to reserve minimum 3% vacancies of the cadre. It is also contended that the respondents failed to comply with the mandate regarding carry forward of the vacancies as provided under Section 36 of the Act 1995.

19. Shri Himanshu Mishra, learned Govt. Advocate for the State submitted that in compliance to the orders dated 17-6-2019 and 26-6-2019 passed in **W.P. No.20649/2018 and W.P. No.20622/2018**, the State Government apprised the MPPSC of the details of the revised vacancies to be filled up through the recruitment process vide letter dated 14-8-2019. Pursuant to the said information supplied by the State the respondent No.2, MPPSC issued a corrigendum on 19-8-2019. It is contended that there cannot be any backlog vacancies in the SC/ST/OBC quota and earlier 6% quota for the PH category was wrongly computed from the total number of sanctioned post in the respondents-Department, whereas the computation of 6% seats for PH category has to be made on the basis of the vacancies advertised. He referred to the provisions of Section 34 of the Act 2016. He further submitted that the aforesaid computation of vacancies is also as per provisions of Rule 13 of the M.P. Rights of Persons with Disabilities Rules, 2017 *[hereinafter referred to as "the State Rules 2017]*. The aforesaid Rules have been framed

in exercise of powers under Section 101 of the Act 2016. The learned counsel for the respondent – MPPSC submitted that the advertisement was revised in compliance to the directions issued by the State Government.

20. Shri S.K. Rungta, learned senior counsel vehemently argued that the computation of reservation for persons with disability in the present case has been made contrary to the statutory provisions and also the judgment of the Apex Court in the case of **National Federation of Blind and others (supra)**. It is urged that the computation of reservation of the persons with disabilities has to be made against total number of vacancies in the cadre strength and the vacancy based roster for implementing reservation in favour of SC/ST/OBC categories.

21. It is assiduously urged that the computation of reservation for persons with disabilities has to be made against the total number of vacancies in the cadre strength and vacancy based roster has to be maintained unlike post based roster for implementing reservation in favour of SC/ST/OBC. The relevant paragraphs of the judgement in ***National Federation of Blind (Supra)*** are extracted hereunder :

> *"50. 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.*
>
> *51. 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.

52. 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.

53. 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.

54. 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.

Directions:

55. 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:

55.1 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.

55.2 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.

55.3 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."

22. Upon perusal of paras 51, 52, 53 and 54 of the judgment, it is graphically clear that the State was duty-bound to compute the reserved vacancies for the disabled persons against total number of vacancies in the cadre strength to fill it up within a period of three months. Admittedly, this was not done by the respondents-State. For the first time the identification of the post was carried out in the year 2011 and recently no identification of posts has been carried out though the cadre strength of Assistant Professor has substantially been enhanced. The State has neither maintained the vacancy based roster, as directed by the Apex Court in the case of **National Federation of Blind and others (supra)** nor has computed the number of reserved vacancies against total number of vacancies in the cadre strength. The learned counsel for the petitioner has made an illustration on the basis of gazette notification of 2011 (Annexure-P/4) identification of the post. The admitted total number of vacancies in the post of Assistant Professor for Commerce subject on the date of the said notification were 629 and a total of 130 vacancies have been shown in Commerce subject as newly created vacancies in the corrigendum to original advertisement which makes the total number of vacancies in Commerce subject as 759. Persons suffering from blindness are entitled to reservation of 15 vacancies in Commerce subject which is equivalent to 2% of the total 759 vacancies in terms of the said pronouncement whereas in the revised list of vacancies blind persons have been given only 6 vacancies. In the same manner other examples in different

subjects were quoted before us by the learned counsel for the petitioners.

23. We have heard the learned counsel for the parties at length. Before adverting to the submissions regarding computation of vacancies, it is apposite to address the submissions of the learned counsel for the State regarding the State Rules 2017. These Rules came into effect from 25-01-2018, whereas the advertisement was published on 12-12-2017 prior to coming into force of the said Rules. Hence the submissions that the posts were reduced in the subsequent impugned advertisement in the light of Rule 13 of the Rules 2017 has no merit and relevance. The computation of posts has to be examined on the anvil of the provisions of the Act 1995 and the subsequent Act 2016. In the present case the respondents have issued three advertisements revising the vacancies. The original advertisement was issued on 12-12-2017 read with corrigendum dated 12-4-2018 and 25-4-2018. On a perusal of the impugned revised vacancy list on the basis of which the original select list has been revised, clearly reveals that the reserved backlog vacancies have been completely taken out from the reserved vacancies for persons with disabilities and also the vacancies have not been calculated against the total number of vacancies in the cadre strength even subject-wise. The scheme of reservation and of groups of post came into force from 1996 when Section 33 of the Persons with Disabilities Act, 1995 was in vogue, and it was obligatory that minimum of 3% vacancies were to be reserved by every establishment of the appropriate Government. It was further obligatory to follow the provisions of Section 36 of the Act 1995 of carry forward which has already been considered in the preceding paragraph.

24. The Apex Court has already clarified in the case of **Indira Sawhney (supra)** that physically handicapped is a horizontal reservation and, therefore, there is no relation with caste base reservation. In the case of **Ravi Prakash and others (supra)** the Apex Court made it clear that reservation for physically handicapped quota is not dependant on the identification of the post. Therefore, we cannot accept the arguments of the learned counsel for the respondents that for the first time identification has taken place in the year 2011, therefore, there was no question of carrying forward of the post. The aforesaid stand of the respondents is contrary to the statutory provisions containing the scheme of reservation for persons with disabilities, as we have already considered in detail the scope and ambit of Sections 33 and 36 of the Act 1995.

25. The respondents admittedly worked out the backlog vacancies in the year 2011 and notified the same for the post in question in the aforementioned gazette notification. It is admitted position that the respondents have not undertaken any recruitment drive to fill the vacancies against the post in question from the year 1996 till the present recruitment. If the stand of the respondents is accepted, it would permit the respondents to postpone implementation of the scheme of reservation indefinitely and at subsequent recruitment provide reservation against the vacancies advertised only ignoring the principle of carrying forward and the computation of reservation against total number of vacancies in the cadre embodied in the statutory provisions. Further, the same would be contrary to the directives issued by the Supreme Court in the case of **Ravi Prakash and others (supra)**

and also in **National Federation of Blind and others (supra).**

26. The computation of vacancies on the basis of vacancies advertised is contrary to the directives issued by the Apex Court in the case of **National Federation of Blind and others (supra).** We have already referred paras 50 to 54 of the said judgement which have been extracted and considered in earlier paragraph.

27. From the aforesaid, it is vivid that the State was duty-bound to compute the reserved vacancies for persons with disabilities against the total number of vacancies in the cadre strength and not on the basis of the vacancies advertised.

28. In view of the aforesaid discussion, we hold that the impugned action taken by the respondents reducing the post for the disabled persons by the impugned advertisement is contrary to the statutory provisions envisaged in Sections 33 and 36 of the Act 1995 and Section 34 of the Act 2016 as well. It is further held that the stand of the respondents is also contrary to the judgment passed by the Apex Court in the case of **National Federation of Blind and others (supra).**

29. In view of the aforesaid enunciation of law, it is elucidated that the quota for PH has to be computed on the basis of sanctioned strength and not on the basis of vacancies notified alone. In other words, the PH quota shall be counted on the basis of the posts of the cadre already filled and the vacancies notified. The computation of PH quota in the revised advertisement dated 19-8-2019 is, thus, erroneous. The respondents are directed to redraw the list of PH candidates after revising the quota by computing the posts on

the basis of total vacancies in the cadre strength of the cadre and thereafter to proceed for appointment in accordance with law expeditiously, preferably within a period of one month from the date of receipt of the copy of the order passed today.

30. Before concluding, we place on record the appreciation of erudite submissions advanced by Shri S.K. Rungta, learned senior counsel and his associates, who have ably assisted us in delivering the judgement. We profoundly value the assistance rendered by the learned senior counsel in the right earnest.

31. With the aforesaid observations, **the writ petitions are disposed of** in the manner indicated above.

(Ajay Kumar Mittal)
Chief Justice

(Vijay Kumar Shukla)
Judge

amitabh/ac

Digitally signed by AJAY KUMAR CHATURVEDI
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