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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 29th DAY OF JUNE, 2007

PRESENT

THE HON'BLE MR. JUSTICE CHIDANANDA ULLAL

AND

THE HON'BLE MR. JUSTICE ASHOK B. HINCHIGERI

WRIT PETITION No.16396 of 2006(PIL)

Between

Akhila Karnataka Andha Shikshakarugala
Kshemabhibridhi Sangha
Having its registered office at
Sri Nilaya, No.3152/1 A
3rd Main Road, Tilak Nagar
Mysore

Represented by its Secretary
Sri Veera Kyathaiah N.

...Petitioner

[by Smt. Jayna Kothari, Advocate,
Smt. Sheela Ramanathan, Advocate
and Sri Jagadish Shastri, Advocate]

And

1. Selection Authority and
Deputy Director (Administration)
Department of Public Instructions (Kolar District)
State Government of Karnataka
2. The Secretary
Department of Personnel and Administrative Reforms
State Government of Karnataka

No.32, Vidhana Soudha
Bangalore - 560 001

3. The Director
Department of the Welfare of the Disabled
Ground Floor, Podium Block,
V.V. Towers, Dr. Ambedkar Veedhi
Bangalore - 560 001
4. The Principal Secretary
Department of Women and Child Development
Government of Karnataka
M.S. Building, Near K.R. Circle
Dr. Ambedkar Veedhi
Bangalore - 560 001
5. The Commissioner for Disability
No.10, Thambuchetty Road
Cox Town
Bangalore - 560 005

...Respondents

[by Sri C.S. Patil, AGA for R1 to R4]

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to direct the respondents to amend the Notification dated 20.9.2005 vide Annexure-A to the extent that it bars visually handicapped persons who have total absence of sight from applying to bring it in conformity with the Karnataka Civil Services Recruitment Rules (Amendment Notification dt. 3.9.2005) and the Persons with Disabilities Act 1995 and direct the R1 to accept the applications of qualified visually challenged persons for the posts of primary school teachers and give them an opportunity to be considered as for the posts by permitting them to do the common entrance test afresh, and etc.

This writ petition coming on for hearing this day, **Ashok B. Hinchigeri J.**, made the following:

ORDER

This public interest litigation is filed by 'Akhila Karnataka Andha Shikshakarugala Kshemabhivrudhi Sangha' on behalf of all visually impaired persons in Karnataka. The petitioner-Association has the welfare of blind teachers and educational and employment rights of visually impaired children, as its avowed objectives.

2. The grievance of the petitioner-Association is that the 1st respondent's Notification, dated 20th September, 2005 (Annexure-A) calling for the applications for 4767 posts of primary teachers in Kannada, bars the visually handicapped persons from applying for the said posts. The Notification states that the blind persons who have lost their vision completely would not be considered for the appointment of teachers' posts. In the wake of the impugned notification, the 1st

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respondent rejected all the applications for the advertised posts of primary school teachers from qualified blind persons.

3. It is the case of the petitioner that this exclusion of blind persons is completely arbitrary and unreasonable. While the impugned notification makes reservation for other categories of physically disabled persons for five per cent in the posts, the denial of the reservation to visually challenged persons, amounts to hostile discrimination.

4. Smt. Jayna Kothari, the learned Counsel for the petitioner, has urged the following contentions :

- (a) That clause of the general instructions for filling up the application form which states that the candidature of totally blind applicants would not be considered for recruitment to the posts of teachers,

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runs contrary to Explanation (a) to Rule 2(1)(II) of Karnataka Civil Services (General Recruitment) Rules, 1977, [hereinafter referred to as 'the General Recruitment Rules, 1977' for short], which reads as follows:

"2(1)(II) xxx xxx xxx

Explanation:-

(a) Blindness refers to a condition where a person suffers from any of the following conditions, namely:-

- (i) total absence of sight; or*
- (ii) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or*
- (iii) limitation of the field of vision subtending an angle of 20 degree or worse."*

(a)(i) She submits that the aforesaid provision brings even the totally blind persons within the definition of physically handicapped candidates or persons with disability [hereinafter referred to as 'the PwDs' for short]. In the wake of this provision, Clause (6)3

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of Chapter-3 of the general instructions for filling up the application form which states that “ಸಂಪೂರ್ಣವಾಗಿ ದೃಷ್ಟಿ ಸಾಮರ್ಥ್ಯವನ್ನು ಕಳೆದುಕೊಂಡಿರುವ ವ್ಯಕ್ತಿಯು ಶಿಕ್ಷಕರ ನೇಮಕಾತಿಗೆ ಪರಿಗಣಿಸಲಾಗುವುದಿಲ್ಲ” [persons who have lost their vision completely will not be considered for the appointment of teachers' post], is not sustainable at all. As per Rule 2(1)(II) of the General Recruitment Rules, 1977, the right to take part in the recruitment process has undisputedly accrued to the blind persons.

- (b) Smt. Jayna Kothari brings to our notice the provision contained in Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [hereinafter referred to as 'the PwD Act' for short]. The same is extracted herein below :

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"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 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 in such notification, exempt any establishment from the provisions of this section."

(b)(i) Based on the aforesaid statutory prescription, she agitates the right of sub-reservation of at least one per cent for persons with blindness or low vision. The statute prescribes that one per cent has to be earmarked for persons with blindness or low vision.

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She submits that if three per cent of the posts are reserved for PwDs, one per cent has to be reserved for persons with blindness or low vision. But in the instant case, as the reservation for PwDs is five per cent, it is all the more a case that the reservation for the persons with blindness or low vision cannot be less than one per cent.

(b)(ii) Pointedly bringing to our notice the proviso to Section 33 of the PwD Act extracted hereinabove, she submits that if any department or establishment has to be exempted from the provisions of Section 33 of the PwD Act, the same has to be only by way of publishing a notification having regard to the type of work carried on in the said department or establishment. In the instant case, no such study is carried out in the Education Department and more particularly for the primary

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schools. It is not in dispute that no notification is issued exempting the primary schools from the operation of the provisions contained in Section 33 of the PwD Act. In the absence of mandatory notification, the blind persons have every right to have their candidature considered for the appointment of teachers in primary schools. The whims and fancies of the bureaucrats cannot result in the closure of the doors of recruitment to the blind persons.

- c) She submits that in all other States in our Country, the blind persons are indeed being recruited as teachers in primary schools. Karnataka State is the solitary exception. She takes pain to apprise us of the scenario prevailing elsewhere. She submits that the neighbouring State of Tamil Nadu has increased the reservation for blind persons from one to two

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per cent. In this regard, she has relied upon a Notification, dated 23rd June, 1993 (Annexure-D to the Writ Petition) issued by the Education Department of the Tamil Nadu State. Clauses 2 and 3 contained in the said Notification are extracted hereinbelow:

"2. In this letter second read above, the Director of School Education has stated that according to the decisions taken in the High Level Committee, Deaf and Dumb cannot be considered for employment as far as the teaching posts are concerned and hence it was decided that the present 1% reservation of vacancies for the deaf in teaching posts can be diverted to the blind, thus bringing the reservation to the blind to 2%. He has, therefore, requested to issue necessary orders in this regard.

3. The Government, after careful consideration of the proposal of the Director of School Education in the light of the decision

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taken by the High Level Committee, have decided to accept the proposal for diversion of reservation, already made in the Government Order first read above. Accordingly, the Government direct that the 1% vacancy reserved in the teaching posts of School Education Department for deaf and dumb be diverted to the blind, thereby bringing the reservation for the blind in teaching posts to 2%. The Government also direct that the 1% of vacancy, reserved for the blind in the non-teaching posts in the School Education Department, be diverted to the deaf and dumb thereby bringing the reservation for the deaf and dumb in non-teaching posts to 2%."

(c)(i) She also brings to our notice, the Notification, dated 31st May, 2001 (Annexure-F) issued by the Ministry of Social Justice and Empowerment of the Central Government, in compliance with Section 32 of the PwD Act. This Notification identifies the posts of Assistant Teacher, Primary Teacher, Middle School

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Teacher, Language Teacher, as suitable for persons who are blind or who have low vision.

(d) Nextly, Smt. Jayna Kothari submits that the issue is no more res integra. The Orissa High Court, by its judgment, dated 16th October, 2004 passed in O.J.C 4856 of 2001 directed the Orissa State Government to consider the candidature of blind and other similarly placed candidates under reserved category strictly in accordance with Section 33 of the PwD Act. The Orissa State Government was directed to refinalise the selection list made by it earlier. The unreported judgment is produced as Annexure-E to the writ petition.

(e) Smt. Jayna Kothari further submits that the impugned Notification is issued in flagrant violation of Articles 14, 16 and 21 to the Constitution of India. She submits that keeping the blind persons

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out of the zone of consideration in the recruitment exercise is arbitrary. Permitting persons with certain physical disabilities and not permitting the visually impaired persons to take part in the recruitment process is not reasonable classification. Such a restriction has no reasonable nexus with the objects and reasons of the PwD Act. The principle of equality of opportunity in the matters of public employment enshrined in Article 16 to the Constitution of India is violated in the instant case. As the blind persons are deprived of the opportunity of being considered for public appointments, the same has resulted in the denial of the source of livelihood. In the process, the right to life guaranteed under Article 21 of the Constitution of India is also ignored by the respondents. She draws support from the judgment of the Hon'ble Supreme Court in the case of **AMITA v. UNION OF A.B.M.**

INDIA AND ANOTHER reported in (2005)13 SCC 721. In the said reported judgment, the Hon'ble Supreme Court has held that it is the State's obligation to take necessary steps so that every individual is given equal respect and treatment, to which he is entitled as a human being. When a disabled person meets the eligibility criteria for being appointed as a teacher in all other respects, he or she cannot be excluded on the ground of his or her disability. The Hon'ble Supreme Court has declared that excluding otherwise an eligible candidate on the ground of physical disability would amount to the violation of the constitutional scheme.

- (f) She has also relied upon a judgment of Delhi High Court in the case of **PUSHKAR SINGH AND OTHERS v. UNIVERSITY OF DELHI AND OTHERS**
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reported in **90(2001) Delhi Law Times 36**. The relevant paragraphs of the said judgment are extracted herein below :

"11. The narration of the aforesaid events show how callous approach is shown by the respondents and nothing concrete has happened even when the University took the decision for reserving posts for visually and orthopaedically handicapped persons more than six years ago and the Parliament passed law to this effect more than 4 years ago. When it comes to showing sympathies with disabled persons, we come out with all kinds of slogans or catchwords. We admit that social discrimination is the most significant problem experienced by people with disabilities and we should eradicate it. We recognise that it is not tragic to live in a wheel-chair, disability only becomes a tragedy when society fails to provide the things one needs to lead one's life and that the design of our physical environment should reflect our understanding of the real needs of the disabled. We realise the necessity of
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creating a more accessible and a more caring society for people with disabilities. But when it comes to real action, we forget that people with disabilities have the right to be both equal and different. In fact this case amply proves that physical and attitudinal barriers are more limiting than limbs that are paralysed and that other people's attitudes not one's own disability, whether it came from birth or later, are the bigger barriers.

12. *Undisputedly the people with disabilities also have same rights, hopes and aspirations as everyone else. They are to be provided with equal opportunities and rather better incentives for their rehabilitation in the society. Asian and Pacific countries, primarily with this end in view, started decade of disabled persons from 1993 which is to go upto the year 2002. For this purpose a meeting was held in Beijing on 1st to 5th December, 1992 called the "Meet to Launch the Asian and Pacific Decades of Disabled Persons". In this meeting Asian and Pacific countries adopted the proclamation on the "full participation and quality of people with*

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disabilities in the Asian and Pacific regions". To give effect to this proclamation Parliament of India passed the enactment known as "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995".

- (g) Her last submission is that, out of 4767 candidates appointed for the posts of teachers in primary schools pursuant to the impugned notification at Annexure-A, not even one candidate with visual impairment is appointed.

5. Two other learned members of the bar sought leave of the Court to address their arguments. As this writ petition is in the nature of public interest litigation and as the petitioner-Association is espousing a public cause, we have permitted them to make their submissions.

6. Smt. Sheela Ramanathan, the learned counsel, made the following submissions:

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- (a) Between 1996 and 2006 as many as 86,939 posts of teachers in primary schools are filled up. Despite the statutory requirement for reserving five per cent of the posts for PwDs (which comes to 4346), the number of the PwDs appointed does not exceed 1300. Not even one blind person is appointed as a teacher in any subject other than in music.
- (b) She also takes exception to the subject-wise reservation for visually impaired persons in the matter of recruitment of teachers in primary schools. She ventilates the grievance on behalf of the blind persons that the posts of music teachers are given to the blind persons only to deny them the posts of teachers in other subjects.

7. Sri Jagadish Shastri, another learned counsel has made the following submissions:

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(a) He has drawn our attention to an unreported judgment in the case of **P.M. MUNIREDDY v. KARNATAKA PUBLIC SERVICE COMMISSION (Writ Petition No.810 of 1979)** disposed off on 11th November, 1980 wherein it is held that if the Lecturers are to be selected in more than one subject, the reservation has to be determined on the basis of the total number of posts.

(b) Nextly, he brings to our notice a judgment in the case of **S.S. ANNEGOWDA v. KARNATAKA PUBLIC SERVICE COMMISSION** reported in **1982(2) KLJ.**

217. Based on the said judgment, Sri Shastri contends that at least one per cent of 4767 posts are to be filled up with the PwDs having blindness or low vision.

(c) Sri Shastri further submits that out of 35,094 posts of teachers for which the recruitment took place

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between 2001 and 2007, not even one blind or visually impaired candidate is appointed. He has also relied upon the judgment of the Apex Court in the case of **DAYA RAM TRIPATHI v. STATE OF UP AND ANOTHER** reported in **1986(4) SLR 151** in support of his submission that the Government cannot create needless hurdles in accommodating physically handicapped persons in suitable posts.

8. Per contra, Sri C.S. Patil, the learned Additional Government Advocate appearing for the respondents 1 to 4, submits as follows:

- (a) The petition is hit by the principles of res-judicata. The petitioner had filed Writ Petition No.12648 of 2004, which came to be disposed off on 15th November, 2005 holding that no further directions are necessary to be issued by the State

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Government. On the same cause of action, the petitioner cannot file one more public interest litigation. In support of his submission he relies on a Division Bench judgment of this Court in the case of **V.K. KULKARNI v. STATE OF MYSORE AND ANOTHER** reported in **AIR 1963 MYS. 303**. The relevant portion of the said judgment is extracted hereinbelow:

"15. Now, can the petitioner who was one of the applicants before us in that batch of writ petitions in which that part of the competitive examination which had been conducted until the stage at which the viva voce examination was commenced was stated to be not open to any criticism, and who did not then before this Court urge any objection to Rule 5 which prescribed the conditions of eligibility such as the one now urged before us, advance before us a contention which if accepted would lead to the nullification of the entire examination including the notification by which the

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Commission invited applications. In my opinion, it is both good sense and good law that an objection which was available to the petitioner when he came to this Court on an earlier occasion and which was not urged by him cannot be permitted when he presents a subsequent application to make that contention the foundation of an argument which if accepted might result in the annihilation of even that part of the competitive examination conducted by the Commission the validity of which was recognised on the earlier occasion. It is too well established that as in the case of all litigants a litigant who presents a writ petition must disclose the entire field of his challenge to what he complains against. If he is permitted to bottle up some part of his case so that he may again rest another writ petition on that part of the case at a subsequent stage, litigation would become interminable."

- (b) The Government of Karnataka has issued Notification, dated 29th November, 2002 (Annexure-G to the Writ Petition) identifying the posts for

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disabled persons. This Notification is issued in exercise of the power conferred by Sub-section (1) of Section 32 of the PwD Act. Thus, reservation is readily provided to visually challenged persons;

- (c) The impugned Notification is in keeping with the proviso to (1A) to Rule 9 of the General Recruitment Rules, 1977; It is extracted hereinbelow:

“Provided further that this sub-rule shall also not be applicable for direct recruitment of persons suffering from a physical handicap of such nature and in respect of such posts as may be specified by notification, by Government from time to time.”

- (d) If totally blind persons are appointed as teachers, they would have difficulty in checking and supervising the work of the students; they would also have difficulty in enforcing discipline amongst the students;

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- (e) By issuing Notification at Annexure-R1, the Clause contained in paragraph 6 (1)(a)(3) of page 14 of Chapter 2 of the manual pertaining to reservation is withdrawn;
- (f) As per the Circular, dated 12th October, 2004 (Annexure-R2), no provision is made for the completely blind candidates for being appointed as teachers in primary schools. As this Circular itself is not challenged, the petitioner is not entitled to any relief in this petition.
- (g) The posts of music teachers are readily thrown open to the completely blind persons.

9. The submissions of the learned counsel have received our anxious consideration. The only question that arises for our consideration is-

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Whether completely blind persons can be precluded from being appointed as teachers in Primary Schools?

10. We propose to refer to the relevant statutory provisions and to consider the prevailing scenario elsewhere for the purpose of answering the point, which has arisen for our consideration.

11. Section 32 of the PwD Act prescribes the identification of posts, which can be reserved for PwDs.

It reads as follows:

"32. Identification of posts which can be reserved for persons with disabilities.- Appropriate Governments shall-

(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."

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12. Proviso to Section 33 states that having regard to the type of work carried on in any department or establishment, the appropriate Government may, by Notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this Section.

13. Explanation to a(i) to Rule 2(1)(II) of the General Recruitment Rules, 1977, which is extracted in paragraph 4(a) (supra), brings the completely blind persons also within the meaning of the term physically handicapped candidate or PwD. Similarly, Section 2(1)(II)(a)(i) of the General Recruitment Rules, 1977 brings blindness within the fold of disability. Explanation (a) to Rule 2(1)(II) of the General Recruitment Rules, 1977 appears to have been borrowed from Section 2(b) of the PwD Act. Thus according to both, the General
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Recruitment Rules, 1977 and PwD Act, a completely blind person is a PwD.

14. Nextly, we will have to see whether a completely blind person is entitled to a sub-reservation out of the quota of three per cent earmarked for PwDs. Section 33(i), which is extracted hereinabove, prescribes that the Government shall prescribe at least one per cent reservation for persons suffering blindness or low vision. Thus it is a requirement of PwD Act that at least one per cent of the posts are to be reserved for persons with blindness or low vision.

15. At this juncture, it is profitable to refer to the prevailing pattern in the Government of India and other States in the Country. The Central Government has already identified the posts of Assistant Teachers, Primary Teachers, Middle school Teachers, Language Teachers, as suitable for the persons who are blind or

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who have low vision. This is evident from its Notification, dated 29th December, 2005 (Annexure-C). The Notification, dated 23rd June, 1993 (Annexure-D) brought out by the Government of Tamil Nadu shows that two per cent of the teaching posts are reserved for the blind persons.

16. In the instant case there is no Notification issued by the State Government under Section 33 of the PwD Act exempting the Public Instructions Department from the provisions of the said Section. Further the Notification, dated 29th November, 2002 (Annexure-G to the Writ Petition), on which the State Government is falling back, is only a Notification under Section 32 and not under Section 33 of the PwD Act. Besides the said Notification itself reveals that a Committee was constituted to identify the posts that can be filled up by PwDs on 4th June, 1998. Its recommendations are

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gazetted in November, 2002 and made applicable for the recruitment in 2005. This, in our considered view, is not in compliance with the statutory requirement contained in Section 32(b) of PwD Act. The said statutory provision states that the appropriate Government shall at periodical intervals, not exceeding three years, review the list of posts identified and update the list taking into consideration the developments in technology. In the instant case there has been no periodical review, no updating whatsoever.

17. It is also profitable to refer to some of the leading judgments on the question involved in this case. The Delhi High Court in the case of **RAVI KUMAR ARORA v. UNION OF INDIA AND ANOTHER** reported in **ILR (2004)I DELHI 592** has this to say: "the ingenuity of bureaucratic system can set at naught implementation of the best-intended legislation."

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18. This Writ Petition highlights lack of sympathetic consideration for the PwDs. The State Government is therefore liable to be commanded by a direction to carry out its statutory obligations under Section 32 and 33 of the PwD Act within a definite time-frame.

19. When the experience of the Government of India and the neighbouring State of Tamil Nadu in the matter of employing the blind persons as teachers in primary schools has not been bad, there is no reason why the experiment should not be tried in Karnataka.

20. The submission urged on behalf of the Government that the Writ Petition is hit by the doctrine of res judicata, does not commend itself to us because, no doubt, the earlier PIL W.P. No.12648 of 2004 was filed seeking a direction to the State Government to enforce the educational rights of visually handicapped children

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and to establish and set up special facilities in all Government and aided primary schools for the visually impaired children, so as to integrate them in mainstream of the society; establish adequate number of printing presses in braille, to provide books, educational materials, teaching aids, etc. Writ Petition No.3517 of 2005 was filed seeking, interalia, a direction to the Government to accept the applications of qualified visually challenged persons for the posts of primary school teachers. In both the petitions there was no challenge whatsoever to a particular clause in the Notification, dated 20th September, 2005. Perhaps the two writ petitions were filed before the issuance of Notification, dated 29th September, 2005. We therefore negative the first contention urged by Sri C.S.Patil, learned Additional Government Advocate, that the petition is hit by the principles of resjudicata. Besides

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technicalities can not stand in the way of doing substantial justice.

21. The submissions on behalf of the Government regarding the Notification, dt.29.11.2002 (Annex.G) to the writ petition identifying the posts for disabled persons providing for reservation to the visually challenged persons has to be considered. At Sl.No.68 in the schedule to the said notification only the music teachers' posts are thrown open to the totally blind persons; the posts of music teachers grade 1 and 2 (HS), packer, counter, Group D post Sweeper, Cleaner, Peon are thrown open to the persons with low vision. The posts of teachers in the languages and core subjects are not set apart for the persons with complete blindness and low vision. This kind of exclusion from certain posts is not permissible unless the Government reviews the list of posts identified at periodical intervals not exceeding three

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years. Further in this case, there is no Notification issued U/s.33 of the PwD Act exempting the establishment of the Public Instructions Department from the provisions of the Sec.33 of the PwD Act. It is high time the Government brings its Notifications in conformity with the Statute and the Rules framed thereunder.

22. We find that the reliance on the proviso to Sub-Rule 1(A) of Rule 9 of the General Recruitment Rules can be of no assistance whatsoever. The said proviso was inserted by a Notification, dt.27.8.1981 Gazatted on 10.9.1981. After the coming into force of the PwD Act on 1.1.1996, any physically disabled person suffering from a handicap of certain nature can be excluded from the recruitment process only under the relevant statutory provisions of the PwD Act. The question of acting upon

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a notification which itself is not in conformity with the PwD Act does not arise at all.

23. The submissions on behalf of the Government that the blind persons, if appointed as teachers, would not be in a position to supervise the work of the students and enforce the discipline amongst them also does not commend itself to us. We cannot but borrow the expression of the Delhi High Court in the case of PUSHKAR SINGH (supra) that our attitudes are more paralysed than the limbs of the disabled persons; PwDs have the right to be both equal and different. Further the Delhi High Court in the said judgment has said that when it comes to the question of showing sympathies to disabled persons, we come out with all types of slogans and catchwords. But when it comes to the question of acting, we show lot of callousness. It is high time our concern is translated into something concrete and

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tangible to make the teachers with total blindness or with low vision more effective teachers; it calls for an innovative approach on the part of the Government. The Government may even consider appointing a blind teacher alongwith a PwD suffering from another handicap like locomotive disability, etc. for one section and they can play their supplementary and complementary roles to ensure that the students do not suffer for want of guidance and want of supervision.

24. We find that the attempts made to justify the exclusion of the blind persons and the persons with low vision from the recruitment process based on the Government Circulars at Annex.R.1 and R.2 is equally untenable. We reiterate that the Government has to withdraw the Circulars, which run contrary to the provisions contained in PwD Act and issue necessary notifications under the said Act. Just because the

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Circulars are not challenged, the writ petition cannot be thrown out.

25. We notice with concern that out of 35,094 teachers for which the recruitment took place between 2001 and 2007, not even one blind person or visually impaired candidate is appointed. We see considerable force in the submissions of Sri Jagadish Shastri that the minimum entitlement of the persons with total blindness or low vision is 48 posts out of 4,767 posts advertised vide Recruitment Notification, dt.20.9.2005. The statutory provisions, the prevailing scenario at the Center and in the neighbouring States to which elaborate references are made hereinabove, entitles the visually handicapped persons to take part in the recruitment process. However, as was brought to our notice by the learned Addl. Government Advocate, Sri C.S.Patil in W.A.No.364/2006, the recruitment process for filling up

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4,767 posts is complete. We have passed a considered order, dt.7.6.2007 in the said appeal, directing the State Government to hold special recruitment for physically handicapped persons to make good the shortfall in the reservations of 5% set apart for the physically handicapped persons. In the special recruitment directed by us in the said appeal, the respondent-Government shall earmark atleast 1% of the posts for persons suffering from blindness or low vision.

26. This writ petition is allowed. No order as to costs.

Sd/-
Judge

Sd/-
Judge