

(2023) 03 KL CK 0135

In the High Court Of Kerala

Case No : Writ Appeal Nos.1602, 1445, 1459, 1514, 1530, 1546, 1558, 1618, 1619,1620, 1622, 1623, 1624, 1625, 1626, 1627, 1629, 1630, 1631, 1632,1636, 1644, 1667, 1668, 1669, 1679, 1680, 1681, 1682, 1703, 1711,1720, 1721, 1722, 1723, 1725, 1726, 1727, 1728, 1729, 17

Haseeb O.P

APPELLANT

Vs

Muhammad Sufiyan V

RESPONDENT

Date of Decision : 13-03-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 19(1), 142, 226
Kerala Education Act 1958 — Section 11
Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995 — Section 2(k), 32, 33, 38
Rights of Persons with Disabilities Act, 2016 — Section 33, 34, 36, 37

Citation : (2023) 03 KL CK 0135

Hon'ble Judges : P.B.Suresh Kumar, J;Sophy Thomas, J

Bench : Division Bench

Advocate : R.K.Muraleedharan, Athira A.Menon, Amal S Kumar, P.K.Nandini
A.P.Jayaraj, T.B.Hood

Final Decision : Disposed Of

Judgement

P.B.Suresh Kumar, J.

1. "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", observed the Apex Court in Union of India v. National Federation of the Blind, (2013) 10 SCC 772, in the context of delay on the part of the authorities in giving effect to the provisions contained in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as "the 1995 Act".

The said observation is proven to be correct by the facts of these cases arising from the decision of the State Government to extend the provisions of the 1995

Act and the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the "2016 Act" which replaced the 1995 Act, to schools receiving aid from the State Government (aided schools). The task of this Court, therefore, is to consider the ways and means to remove the social and practical barriers that prevent people with disabilities from joining the workforce in aided schools. It was also observed by the Apex Court in the said case that in the matter of dealing with cases involving relief to persons with disabilities, the approach of the executive must be liberal and relief oriented, for a little concern to this class can do wonders in their lives, help them stand on their own and not remain at the mercy of others. Let us undertake the task keeping in mind the said observation of the Apex Court.

2. These appeals, except W.A.No.1667 of 2022, arise from the common judgment in three writ petitions namely, W.P.(C) Nos.19808 of 2021, 17632 of 2021 and 11673 of 2022, of which one was instituted by the office bearer of an association seeking general directions for the benefit of persons with disabilities and the other two were instituted by persons with disabilities seeking general as well as personal reliefs. W.A.No.1667 of 2022 is one instituted challenging the judgment in W.P.(C) No.8090 of 2022 instituted by a few persons with disabilities seeking reliefs similar to the reliefs claimed in W.P.(C) No.11673 of 2022 which was disposed of in tune with the common judgment impugned in the remaining appeals. As the questions arising for consideration in all the appeals are one and the same, they are disposed of by this common judgment. Parties and documents are referred to in this judgment, unless otherwise mentioned, as they appear in W.P.(C) No.19808 of 2021.

3. On 6.9.2021, having noticed that a large number of proposals received by the Department of General Education for approval of the appointments made in aided schools after 15.07.2021 were not processed, the Director of General Education issued Ext.P4 communication calling upon the educational officers in the State to approve the said appointments on or before 24.09.2021. W.P.(C) No.19808 of 2021 was one instituted on 18.09.2021 by one K.J.Varghese styling himself to be the President of an organisation called the Kerala Federation of the Blind, challenging Ext.P4 communication. A direction was also sought in the said writ petition to the State Government to direct the Managers of all aided schools in the State to give effect to the provisions in the 1995 Act and the 2016 Act, hereinafter referred to collectively as "the Statutes" as regards reservation for employment in favour of persons with disabilities in aided educational institutions and also to take immediate steps to effect the backlog in the appointments in the arising vacancies. The case set out by the petitioner in the said writ petition is that even though the State Government has issued Ext.P1 order as early as on 18.11.2018 extending the application of the Statutes to all aided educational institutions in the State with effect from 07.02.1996 and directed the concerned administrative departments to instruct the appointing authorities to ensure compliance of the provisions of the Statutes and to make up the backlog in the appointments in the vacancies arising from 18.11.2018, the same has not been

given effect to.

4. On 23.09.2021, this Court passed an interim order in W.P.(C) No.19808 of 2021 staying Ext.P4 communication, taking the view that appointments made after 18.11.2018 are not liable to be approved without implementing the directions contained in Ext.P1 order.

5. On 08.11.2021, while the said writ petition was pending, the Government issued Ext.P5 order directing that steps shall be taken to make up the backlog in the appointments in aided schools in terms of the Statutes in the arising vacancies. As per the said order, the Director of General Education was also directed to ensure compliance of the said direction. After having issued the said order, the Government moved an interlocutory application in W.P.(C) No.19808 of 2021 seeking orders vacating the interim order passed on 23.09.2021. This Court did not vacate the interim order. Instead, this Court clarified that the interim order dated 23.09.2021 will not preclude the approval of appointments made in posts other than those identified as suitable for appointment of persons with disabilities. Later, W.P.(C) No.19808 of 2021 was amended incorporating a prayer for quashing Ext.P5 order also, to the extent it permits implementation of the provisions of the Statutes in the vacancies that arose after 8.11.2021.

6. W.P.(C) No.11673 of 2022 is one instituted by five other persons with disabilities who are eligible and qualified to be considered for appointment to teaching posts in aided schools against vacancies earmarked for persons with disabilities in terms of the Statutes. The challenge in the said writ petition was also against Ext.P4 communication and Ext.P5 order of the Government to the extent it permits implementation of the provisions of the Statutes in the vacancies that arose after 8.11.2021.

7. W.P.(C) No.17632 of 2021 is one instituted by another person with disability. The case set out by her in the said writ petition is that she is eligible and qualified to be considered for appointment to the post of HSA (Hindi) in aided schools against the vacancies earmarked for persons with disabilities in terms of the Statutes; that there is a vacancy of HSA (Hindi) in the sixth respondent school, and that even though she preferred an application for appointment against the said vacancy, the same is not being considered. The prayer in the said writ petition, in the circumstances, was for a direction to the sixth respondent to comply with Ext.P1 order.

8. A counter affidavit was filed by the State in W.P. No.19808 of 2021 contending that Ext.P1 order was under challenge in a few writ petitions, that the judgment in the said cases attained finality only on 05.07.2021 and that it is due to the said reason that Ext.P1 order was not given effect to. It was stated in the counter affidavit that if persons with disabilities are directed to be appointed retrospectively, teachers who secured appointments after 18.11.2018 will have to be terminated. It was also stated in the counter affidavit that as vacancies sufficient to make up the backlog appointments exist now in the aided schools,

the appointments already made need not be disturbed. It was also pointed out that guidelines have also been prescribed by the Government on 25.06.2022 for giving effect to Ext.P5 order. Ext.R1(a) is the order issued by the Government in this regard. A counter affidavit was filed by the State in W.P.(C) No.11673 of 2022 also, more or less on the same lines.

9. The sixth respondent in W.P.(C) No.17632 of 2021 filed a counter affidavit in the said writ petition contending that the request made by the petitioner in the writ petition was received only on 20.07.2021 and the vacancy referred to by the petitioner was filled up in the meanwhile on 15.07.2021 itself.

10. The learned Single Judge, on an elaborate consideration of the facts and circumstances of the case and the law on the point, took the view that in the absence of any interim order in the writ petitions in which Ext.P1 order was challenged and also in the appeals preferred against the judgment in the said writ petitions, it was obligatory for the Government to ensure compliance of Ext.P1 order and consequently, disposed of the writ petitions with the following directions:

"a) It is declared that the Managers of Aided Schools are bound by G.O.(P) No.18/2018/SJD dated 18.11.2018, and they shall provide 3% reservation of the total number of vacancies in the cadre strength in appointments in Aided Schools to the posts with effect from 07.02.1996 and to fill the backlog from 07.02.1996 to 18.04.2017; and 4% reservation of the total number of vacancies in the cadre strength in appointments in Aided schools with effect from 19.04.2017 in tune with G.O.(P) No. 5/19/SJD dated 7/05/2019 and the orders referred to therein.

b) Order dated 06.09.2021 vide No. H(2)/19500/2019/D.G.E. issued by the Additional Director General (Ext.P4 in W.P.(C) No.19808/2021) will stand quashed.

c) G.O.(P) No.19/2021/G.Edn. dated 08.11.2021 (Ext.P5 in W.P. No.19808/2021) and Order dated 07.12.2021 vide No. H(2)/295299/2021/D.G.E. issued by the Additional Director General (Ext.P6 in W.P.(C) No.19808/2021) to the extent that it fixes a cut off date and directs that only vacancies in Aided schools which arise after 08.11.2021 shall be filled up in terms of the 1995 Act/2016 Act will stand quashed.

d) In terms of G.O.(M.S) No.111/2022/G.Edn. dated 25.06.2022 but without the cutoff date fixed as 08.11.2021, backlog vacancies from 07.04.1996 shall be calculated and the roster shall be prepared within a period of two months from today tabulating the first in 33 vacancies from 07.02.1996 and the first in 25 vacancies from 19.04.2017 onwards for absorbing differently abled in the process of recruitment in Aided Schools in respect of vacancies that have arisen after the date of issuance of G.O.(P) No.18/2018/SJD dated 18.11.2018 as upheld by this Court in Renjith (supra) and in tune with G.O.(P) No. 5/19/SJD dated 7/05/2019 and the previous orders referred to therein.

e) Appointments already made by the management after the date of issuance G.O.(P) No.18/2018/SJD dated 18.11.2018 in respect of which approval has not been granted by the educational authorities to date shall be subject to the directions above. Only after filling the backlogs as directed above, shall approval be granted in respect of those appointments. Approval of appointments already granted shall not be unsettled.

The Government accepted the decision of the learned Single Judge and issued an order on 19.09.2022 modifying Ext.R1(a) order to the effect that the backlog in the appointments due to persons with disabilities in terms of the Statutes shall be made up in the vacancies arising after 18.11.2018 itself.

11. Respondents 4 to 81 in W.P.(C) No.19808 of 2021 who are Managers of some of the aided schools in the State are aggrieved by the decision of the learned Single Judge. W.A.No.1602 of 2022 is one filed by them challenging the judgment in the said writ petition. W.A.Nos.1619 of 2022 and 1669 of 2022 are filed by the fourth respondent in W.P.(C) No.19808 of 2021, who is the Manager of an aided school, challenging the judgments in the remaining writ petitions. The remaining appeals, other than W.A No.1667 of 2022 are instituted by third parties challenging the common judgment in the three writ petitions. W.A.No.1667 of 2022 is also an appeal filed by the Manager of an aided school. Among the appellants in the third party appeals, some are teachers and non-teaching staff appointed in aided schools after 18.11.2018, some are teachers and non-teaching staff appointed in aided schools after 8.11.2021, but in the vacancies that arose before 8.11.2021, some are teachers and non-teaching staff appointed in aided schools in the vacancies that arose after 8.11.2021 and the rest are Managers of aided schools. As far as the first two categories of appellants in the third party appeals are concerned, the grievance voiced by them is that, but for the directions issued in the impugned judgment, their appointments would have been approved by the educational officers concerned. As far as the third category of appellants in the third party appeals are concerned, even though they contend that their appointments also would have been approved but for the directions in the impugned judgment, they do not dispute the fact that in terms of Ext.P5 order, fresh appointments, without compliance of the provisions contained in the Statutes were interdicted in aided schools by the Government. Similarly, they also do not dispute the fact that none of them have challenged Ext.P5 order. In the circumstances, it is unnecessary for us to deal with the grievance voiced by the third category of appellants in the appeals. As far as the appeals instituted by the Managers of aided schools are concerned, including the Managers who were party to the writ petition from which these appeals arise, it is seen that they are only espousing the grievances of the three categories of teaching and non-teaching staff appointed by them as referred to above. As such, according to us, it is suffice to deal with the grievance voiced by the first two categories of appellants, viz, teachers and non-teaching staff appointed in aided schools after 18.11.2018 in the vacancies that arose before 8.11.2021 and teachers and non-teaching staff appointed in aided

schools after 8.11.2021, but in the vacancies that arose before 8.11.2021.

12. Heard the learned counsel for the appellants, the learned counsel for the petitioners in the writ petitions as also the learned Government Pleader.

13. The learned counsel for the appellants in the appeals contended in unison that inasmuch as the teachers appointed in aided schools in the State after 18.11.2018 were not arrayed as parties to the writ petitions either personally or in a representative capacity, the impugned judgment is liable to be set aside on that sole ground. According to them, such a course was necessary as they were persons who will be affected by the reliefs sought for in the writ petitions. The learned counsel elaborated the said submission by referring to the provisions contained in the Kerala Education Act and the Rules made thereunder (the KER) and pointing out that the scheme of appointment under the Kerala Education Act and the KER is that once the appointment is approved, it relates back to the date of appointment. While some of the learned counsel raised the said argument on the basis that such a course was necessary to comply with the principles of natural justice, some others raised the said argument on the basis that Rule 148 of the Rules of the High Court of Kerala mandates such a course. It was also pointed out by the learned counsel that the judgment rendered by this court in an identical case has been set at naught by the Apex Court in Civil Appeal Nos.551-553 of 2023 on the very same ground. It was also submitted by the learned counsel, placing reliance on the decision of this Court in Anil Kumar v. State of Kerala, 2022 (1) KLT 197, that the jurisdiction of this Court under Article 226 of the Constitution though couched in wide terms, it shall not be exercised, if the exercise of the same would result in injustice to persons who are not parties to the litigation.

14. It was also argued by the learned counsel for the appellants in unison that the impugned judgment, insofar as it was held therein that the appointments of teachers made after 18.11.2018 which have been approved need not be unsettled, treats equals unequally, and inasmuch as the petitioners do not challenge that part of the impugned judgment in appeal, the teachers, whose appointments are not approved, are to be treated at par with teachers whose appointments are approved.

15. Dr.George Abraham, the learned counsel appearing for the appellants in some of the appeals contended, in addition, that Section 38 of the 1995 Act envisages a scheme for ensuring employment of persons with disabilities and such a scheme as provided for in the said provision is yet to be framed by the State Government. According to him, without a scheme in terms of Section 38 of the 1995 Act, the provisions of the Statutes cannot be implemented. Sri.Kurian George Kannanthanam, the learned Senior Counsel appearing for the appellants in some other appeals contended, in addition, that W.P. No.19808 of 2021 is not maintainable inasmuch as the petitioner therein has no case that any of his rights, constitutional or statutory, is infringed on account of the inaction on the part of the State Government in implementing Ext.P1 order. As regards the

remaining writ petitions, it was argued by the learned Senior Counsel that in as much as the same are not writ petitions instituted in a representative capacity, the learned Single Judge ought not have issued any general directions as done in terms of the impugned judgment.

16. Sri.V.A.Muhammed, learned counsel appearing for the appellants in some of the appeals argued in addition, placing reliance on Section 36 of the 2016 Act, that it is obligatory on the part of the Government to prescribe by notification the jurisdiction of special employment exchanges from where the list of persons with benchmark disabilities could be obtained by the Managers in order to comply with the requirements of the Statutes. According to the learned counsel, no such notification has been issued till date and only on issuance of notifications in terms of Section 36, the Managers are obliged to comply with requirements of the Statutes as regards reservation in favour of persons with disabilities. It was also argued by the learned counsel that at any rate, since posts are identified and notified for appointment in terms of the provisions of the Statutes only on 25.6.2022 as per Ext.R1(a) order, appointments could be made only thereafter. Sri.Elvin Peter P.J., the learned counsel appearing for the appellants in some other appeals contended, in addition, that on appointment, going by the scheme of the Kerala Education Act and the KER, the appointee gets title to hold the post and the approval is only a subsequent act and therefore, unless the appointment is challenged and set aside, approval alone cannot be interfered with. The learned counsel has also contended that W.P.(C) No.17362 of 2021 instituted seeking a writ of mandamus against the Manager of an aided school is not maintainable. He relied on the decision of this Court in *Kendriya Vidyalaya Sangathan v. Elna Chinchu*, 2022 (5) KLT 527, in support of the said argument. It was also argued by the learned counsel that inasmuch as the 1995 Act came into force as early as on 07.02.1996, the appointments made in aided institutions since then, otherwise than in accordance with the said Act, are illegal and the learned Single Judge could not have therefore drawn a distinction between persons who got approval for their appointments after 2018 and before 2018. According to the learned counsel, the said classification is without any rational basis and does not have any nexus with the object sought to be achieved. The submission made by the learned counsel, therefore was that if the cut-off date fixed for implementing the provisions of the Statutes is found to be bad, the conclusion that the appointments already made are to be approved, is inescapable, if the same are otherwise in order. The learned counsel relied on the decision of the Apex Court in *Ashwani Kumar v. State of Bihar*, (1997) 2 SCC 1, in support of the said argument.

17. Sri.T.T.Muhamood, the learned counsel for the appellants in some of the appeals argued that the Government has not issued any direction individually till date to the Managers to comply with the provisions of the Statutes insofar as it relates to the reservation in appointments in favour of persons with disabilities, and the direction in Ext.P1 order is only to the concerned administrative departments of the State Government to instruct the appointing authorities to do

so and that the Managers of aided schools cannot, therefore, be blamed for having made appointments otherwise than in accordance with the Statutes. Sri.R.K.Muraleedharan, the learned counsel for the appellants in some of the appeals argued, placing reliance on the decision of the Apex Court in *Ajay Kumar Pandey and Others State of U.P. and Others* [Civil Appeal No.4811 of 2022] that the reservation provided for in favour of persons with disabilities in terms of the Statutes is only in 3% / 4% of the total number of vacancies in an establishment and not in all cadres of every establishment. It was argued by the learned counsel that the direction in Ext.R1(a) order to provide the statutory reservation in all cadres in aided schools, is one which is neither provided for nor contemplated under the Statutes.

18. Sri.John Joseph Vettikad, the learned counsel for the appellants in some of the appeals argued that appointments have already been made in compliance with the provisions of the Statutes in some of the schools, but nevertheless, appointments subsequently made are not being approved in the light of the impugned judgment. According to the learned counsel, if appointments are already made in tune with the provisions contained in the Statutes, there is absolutely no justification for not approving the appointments subsequently made which are otherwise in order. Sri.Jestin Mathew, the learned counsel for the appellants in some of the appeals argued that the directions issued by the learned Single Judge are not workable since qualified hands are not available among the persons with disabilities for appointment in aided schools in various categories identified as suitable for appointment of persons with disabilities. It was also argued by the learned counsel that the reliefs granted by the learned Single Judge are beyond the prayers sought for by the petitioners in the writ petitions.

19. Sri.P.M.Joseph, the learned counsel appearing for the appellants in some of the appeals has reiterated the submissions made by the learned Senior Counsel Sri.Kurian George Kannanthanam. In addition, it was pointed out that as sufficient number of qualified hands are not available among persons with disabilities for appointment in aided schools in compliance with provisions of the Statutes, the directions issued by this Court would adversely affect the interests of the students. In order to buttress the said argument, it was pointed out by the learned counsel that large number of posts are lying vacant in Government departments and other establishments which are reserved for persons with disabilities. Sri.K.Ramkumar, the learned Senior Counsel appearing for the appellants in some of the appeals argued that the Kerala Education Act and the KER provide for appointment of teachers in aided schools in a particular manner and the same cannot be varied or overridden by executive orders. It was also argued by the learned Senior Counsel that the petitioners have, in fact, sought a writ of mandamus for enforcement of statutory rules. According to the learned Senior Counsel, such a writ petition is not maintainable. The learned Senior Counsel has relied on the decision of this Court *Vasudeva Shenoy v. Government of India*, 1994 (1) KLT 389, in support of the said proposition. Placing reliance on

the decision of this Court in Prathyasa Mental Health Counselling Forum v. State of Kerala, 2021 (1) KLT SN 21 (C.No.21), the learned Senior Counsel contended that W.P.(C) No.19808 of 2021 is not maintainable.

20. The learned counsel for the petitioners in the writ petitions made elaborate submissions in reply to the arguments made by the learned counsel for the appellants. We are not referring to the submissions made by the learned counsel for the petitioners in this regard as we propose to refer to the same elaborately while dealing with the arguments advanced by the learned counsel for the appellants. However, it is to be mentioned that on a query from the Court, Smt.P.K.Nandini, the learned counsel for the petitioners in W.P.(C) Nos.19808 of 2021 and 11673 of 2022 submitted that the backlog of appointments as on today would come approximately to 5000.

21. Sri.T.B.Hood, the learned Special Government Pleader although submitted that the stand of the Government was that the provisions in the Statutes as regards reservation in favour of persons with disabilities can be given effect to in the vacancies arising after 08.11.2021, since the contentions put forward by the Government in this regard were not accepted by the learned Single Judge, steps have already been taken to give effect to the provisions contained in the Statutes from 18.11.2018 itself.

22. On being requested by the Court to make submissions as regards the stand of the State in respect of the various submissions made by the learned counsel for the appellants, the learned Special Government Pleader submitted that going by the provisions contained in the Kerala Education Act and the KER, the appointment made by the Manager does not confer on the appointee any title to the post and consequently, the appointee cannot claim any vested right based on the same. It was the submission of the learned Special Government Pleader that if an appointment is concluded by acceptance of the offer, the appointee has a vested right to be considered for approval in accordance with law. Placing reliance on the Larger Bench decision of the Apex Court in Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1, the learned Special Government Pleader also submitted that a judgment of the court cannot be attacked as violative of Article 14 of the Constitution. The learned Special Government Pleader has also submitted that the scheme provided for in Section 38 of the 1995 Act and Section 37 of the 2016 Act have nothing to do with the appointments to be made in terms of the provisions of the Statutes. In the context of the submissions made by the learned counsel for the appellants as regards the alleged illegalities in Ext.R1(a) order, the learned Special Government Pleader submitted that the same is under challenge in various writ petitions and this Court may not, therefore, examine the correctness of the said order in these appeals.

23. At the outset, it is to be mentioned that even though the Government issued Ext.R1(a) order during the pendency of the writ petitions prescribing the procedure to be followed for complying with Ext.P1 order, the same was not

under challenge before the learned Single Judge. As such, it is unnecessary for us to examine the various submissions made by the learned counsel for the appellants as regards the legality of Ext.R1(a) order and it is only appropriate that we leave open that issue for the aggrieved persons to challenge the said order in appropriate proceedings, if so advised. In the nature of the reliefs sought in the writ petitions, the only question that arose for consideration in the writ petitions was whether the appointments made in aided schools after 18.11.2018 otherwise than in accordance with the provisions of the Statutes, and Ext.P1 order are valid, and the learned Single Judge answered the said question in the negative. Let us first examine whether the learned Single Judge was right in answering the said question in the negative, independent of the arguments advanced by the learned counsel for the appellants.

24. The 1995 Act came into force on 07.02.1996. Section 33 of the 1995 Act provides that 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 in the posts identified for each disability. The 1995 Act was replaced by the 2016 Act on 19.04.2017. Section 34 of the 2016 Act provides that every appropriate Government shall appoint in every Government establishment not less than 4% of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities specified therein in the posts identified for each disability. Even though the Statutes came into force on 07.02.1996 and 19.04.2017 respectively, the materials on record indicate that there was no initiative at all from the side of the State Government to give effect to the provisions of the Statutes in Government aided schools. It was while so, one Jasitha K.N., a person suffering from disability had approached this Court in W.P.(C) No.30334 of 2013 complaining of non-implementation of the 1995 Act, and sought directions to the State Government to provide reservation to persons with disabilities in aided schools. The said writ petition was resisted by the State Government contending that since the authority to make appointments in aided schools is with the Managers in terms of the provisions of the Kerala Education Act and the KER, the Government cannot do anything in the matter. This Court repelled the said contention holding that the provisions of the Statutes are certainly to be extended in aided educational institutions also by issuing appropriate directions to such institutions by the State Government which the State Government is competent to do in terms of the provisions contained in the Kerala Education Act and the KER and disposed of the writ petitions, directing the State Government to take necessary steps to implement the provisions of the 1995 Act within two three months. Paragraphs 5 to 7 and 9 of the judgment in the said case read thus:

"5. This court is of the opinion that the view taken by the 3rd respondent cannot be accepted. Aided schools are coming under the direct payment scheme of the Government and the salary of teachers and non teaching staff is paid from the public exchequer. Further, provisions contained in the Kerala Education Act and

the Kerala Education Rules provides authority on the Government to put restrictions with respect to functioning of the aided schools. The managements are bound to comply with such directions issued by the Government from time to time, including directions if any with respect to reservation of any posts of teaching or non-teaching staff for any particular category. Hence the contention that appointment in aided school is the absolute prerogative of the management cannot be accepted.

6. Further question to be decided is as to whether the management will come within the definition of 'establishment' defined under Section 2(k) of the Disabilities Act. The Act provides that 'establishment' means 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. The establishment of an aided school is on the basis of provisions contained in the KE Act and KER. Such establishment is totally controlled in its functioning by the Government. Further it is aided by the Government with respect to payment of salary to the teaching and non teaching staff. Hence this court is of the opinion that aided schools within the State will come perfectly within the definition of 'establishment' contained under Section 2(k) of the Disabilities Act.

Going by directions contained in the judgment in National Federation of the Blinds' case (supra) it is for the State Government to take necessary steps in compliance with the directions. The State Government has to formulate its policy with respect to issuing necessary directions to the management of aided schools within the State, in this regard.

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Under the above mentioned circumstances this court is of the opinion that interest of justice will be achieved by issuing direction to respondents 1 and 2 to take appropriate decision in the matter and to take necessary steps for implementation of the directions contained in the decision of the Honourable apex Court, cited above, with respect to all aided educational institutions within the State. Needful steps in this regard shall be taken at the earliest possible, at any rate within a period of three months from the date of receipt of copy of this judgment."

25. Even though the judgment in W.P.(C) No.30334 of 2013 was rendered as early as on 16.10.2014, the directions therein have not been complied with by the State Government. It is seen that it is only much later on 18.11.2018, the State Government issued Ext.P1 order extending the provisions of the Statutes to all educational institutions getting Government aid in compliance with the directions issued by the Apex Court in Justice Sunanda Bhandare Foundation v. Union of India, (2017) 14 SCC 1. As noted by the learned Single Judge, Ext.P1 order of the Government was categoric that the provisions in the Statutes as regards the reservation in favour of persons with disabilities shall be implemented by all educational institutions getting Government aid with effect

from 07.02.1996. In terms of the said order, the Government also directed the concerned administrative departments to instruct all appointing authorities of such aided institutions to comply with the directions contained therein. The operative portion of Ext.P1 order reads thus:

"6. The Government examined the matter in detail and are pleased to extend the provisions of section 2(k) of Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act 1995 and Rights of Persons with Disabilities Act 2016 to all educational institutions getting Government aid such as staff salary and other allowances, maintenance grant etc. with effect from 7.2.1996. The following instructions should be given to all appointing authorities of such aided institutions by the concerned Administrative Departments immediately.

To ensure 3% reservation of the total number of vacancies in the cadre strength in appointments in aided schools and aided colleges including professional colleges to the posts which are identified as suitable for persons with disabilities and issued vide Government Orders read as 5th to 9th papers above, with effect from 7.2.1996 and to fill the backlog from 7.2.1996 to 18.4.2017 as per the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 with immediate effect.

To provide 4% reservation of the total number of vacancies in the cadre strength in appointments in aided schools and aided colleges including professional colleges to the posts which are identified / to be identified as suitable for persons with disabilities with effect from 19.04.2017 as per the provisions of Rights of Persons with Disabilities Act 2016."

As stated by the petitioners themselves, Ext.P1 order was under challenge in a few writ petitions before this Court. The said writ petitions were heard along with a few other writ petitions instituted by persons with disabilities seeking directions to the Managers of a few aided schools to comply with the requirements of Ext.P1 order. This Court, on an elaborate consideration of the provisions of the Statutes, dismissed the writ petitions instituted challenging Ext.P1 order, in terms of Ext.P2 judgment holding that even without a direction from the State Government, the managements of the aided schools were duty bound to see that differently abled persons are also given appointment under them against the 3% / 4% of the vacancies in such schools. The writ petitions instituted for implementing the provisions of the Statutes were disposed of in terms of the very same judgment, directing the managements to conduct selection and appointment in tune with Ext.P1 order in implementation of the Statutes, after holding that they are bound to fill up vacancies as directed by the Government in Ext.P1 order. Paragraphs 41 and 52 of Ext.P2 judgment read thus:

"41. The minority right or direct payment agreement entered into between the Government also would not stand in the way of implementation of the provisions contained in the Act. The appointment under the Act is also to be done by the

educational agencies. State Government is not interfering with the right of managements to choose persons. Only thing is that while undertaking such selection the requisite percentage shall be from among the persons with disability. The State Government has only directed the Colleges to implement the provisions in the Act, that too, when the Hon'ble Supreme Court had been consistently issuing various directions for its implementation for the last several years. As pointed out by the additional respondents and the petitioners, who represent the beneficiaries of the Act, even without directions from the State Government, it is the duty of the managements of aided educational institutions, to see that the differently abled persons are also given appointment under them against the 3%/4% of the vacancies."

x x x x x x x

In the result, W.P.(C).Nos.1806/2018 and 2800 of 2019 are dismissed. W.P. (C).Nos.224/2019 and 4753/2020 are disposed of with a direction to the respective managements to conduct the selection and appointment in tune with the aforesaid Government Order in implementation of the 1995 Act and Right to Persons with Disability 2016. They are bound to fill up the vacancies as directed in the Government Order.

As the respondents colleges in the Writ Petitions have not filled up any vacancy under the 3%/4% quota, they shall fill up the vacancies only in accordance with the Government Orders, after issuing notification specifying the same."

Ext.P2 judgment was challenged in W.A.Nos.1237 of 2020 and connected cases before this Court on the grounds, among others, that Ext.P2 judgment cannot be enforced since no posts suitable for appointment of persons with disabilities have been identified to be filled up in terms of Sections 32 and 33 of the 1995 Act and Section 33 and 34 of the 2016 Act. It was argued that although the Government identified the posts in Government schools and departments by various orders issued from the year 2008 onwards, no posts in the aided schools were identified for compliance of the provisions of the Statutes. The said contention was repelled by this Court holding that the various teaching posts identified for compliance of the provisions of the Statutes in Government Schools apply equally to aided institutions as well. Even though the judgment in the writ appeals referred to above was challenged before the Apex Court, the special leave petition preferred for the said purpose was withdrawn. In other words, Ext.P2 judgment has become final.

26. As noted by the learned Single Judge, even though there was no interim order in the writ petitions instituted challenging Ext.P1 order or in the appeals preferred against the decision in the writ petitions, or in the special leave petition preferred before the Apex Court challenging the appellate decision, there is nothing on record to show that the directions in Ext.P1 order to implement the provisions of the Statutes with effect from 07.02.1996 has been given effect to by any of the Managements of aided schools in the State. It is conceded that

despite the fact that there was no interim order in the writ petitions or in the further proceedings that arose from the writ petitions, the Government or the Department of General Education in the State have not taken any action to implement its decision to extend the provisions of the Statutes to aided institutions in the State with effect from 07.02.1996. Instead, the officials in the Department of General Education who are obliged to give effect to Ext.P1 order, flouted Ext.P1 order by approving the appointments made from 18.11.2018, violating not only the provisions contained in the Statutes but also the directions issued by the Apex Court. It is of course possible that the officers in the Department of General Education may omit to take note of the provisions in the Statutes as also the directions issued by the Apex Court, on the basis of which Ext.P1 order was issued by the Government on 18.11.2018, but is very difficult to assume that the educational officers throughout the State without exception would flout Ext.P1 order of the Government without the concurrence of the Government. We take this view also for the reason that despite the provisions in the Statutes and Ext.P1 order issued by the Government in implementation of the same, that too, pursuant to the directions issued by the Apex Court, the Government deputed its nominees for constituting selection committees for appointment to the post of Higher Secondary School Teachers on requests being received from the managements of aided schools. In other words, it could be seen that there was a conscious decision at the appropriate level of the Government that the provisions of the Statutes need not be implemented. We take this view also in the light of Ext.P4 communication issued by the Director of General Education. As noted, Ext.P2 judgment attained finality on 15.07.2021 when the special leave petition preferred against the judgment of this Court affirming Ext.P2 judgment was withdrawn. Ext.P4 communication of the Director of General Education issued on 06.09.2021 is one directing the educational officers in the State to complete the process of approving the appointments made by the Managers of aided schools on proposals received after Ext.P2 judgment has become final, violating the provisions of the Statutes and flouting the directions of the Government in Ext.P1 order issued as early as on 18.11.2018. It is at that point of time, W.P.(C) No.19808 of 2021 was instituted, and this Court passed an interim order in the said case on 23.09.2021 staying Ext.P4 communication. It was only then the Government woke up from slumber and issued Ext.P5 order. As noted, even in Ext.P5 order, the Government did not direct implementation of the provisions of the Statutes as directed in Ext.P1 order. Instead, the direction issued in Ext.P5 was only to take steps to implement Ext.P1 order and to make up the backlog appointments in the arising vacancies. In other words, at the stage of passing Ext.P5 order also, there was a conscious decision by the Government to postpone the implementation of the provisions of the Statutes and Ext.P1 order till 08.11.2021. In the light of the specific finding in Ext.P2 judgment that the provisions of the Statutes would apply to aided schools in the State and that the provisions of the Statutes should have been complied with by the managements of aided schools even without a direction from the Government and in the light of the specific finding in the judgment of

the Division Bench affirming Ext.P2 judgment that there is no impediment whatsoever in giving effect to the provisions of the Statutes, there was absolutely no justification for not implementing the provisions of the Statutes by the Managers of aided institutions in the State with effect from 18.11.2018. Even if it is assumed that there was a legitimate doubt in the State as to whether the provisions of the Statutes would apply to aided educational institutions, the managements of aided institutions cannot be heard to contend after Ext.P1 order that the Statutes do not apply to them and they were duty bound to give effect to the provisions of the Statutes with effect from the date of Ext.P1 order.

27. It is seen that it was at a stage where the State had no option but to give effect to the provisions of the Statutes, Ext.P5 order was issued on 08.11.2021 directing the Managers of the aided schools to give effect to the provisions of the Statutes and to make up the backlog appointments in the vacancies arising after 08.11.2021. Let us now examine whether the Government is justified in postponing the implementation of the provisions of the Statutes from 18.11.2018 to 08.11.2021. Even though it was asserted by the learned counsel for the appellants who are teachers appointed in vacancies that arose after 18.11.2018 in various aided schools in the State that they have acquired thereby a title to the posts in which they are appointed and their right cannot be taken away on any ground whatsoever, the Government has not put forward any such case. The case set out by the Government, on the other hand, was only that if the decision to give effect to the provisions in the Statutes is not postponed till 08.11.2021, the teachers who are appointed in the vacancies that arose after 18.11.2018 earmarked for persons with disabilities, will have to be terminated. It was also contended by the State that rights of persons with disabilities could be protected by earmarking the vacancies that arose after 08.11.2021, which were not permitted to be filled up, exclusively for them.

28. In this context, it has to be mentioned that the rights claimed by persons with disabilities for appointment in aided educational institutions is not only statutory, but also constitutional, for it is Article 16(1) of the Constitution that deals with the power of the Central Government to make a provision for reservation in favour of persons with disabilities. Viewing the rights of persons with disabilities in the above perspective, having accepted the fact that the State has the obligation to give effect to the same in aided schools and having issued an order to the effect that the same shall be given effect to from 18.11.2018, we do not think that the Government could postpone the implementation of the provisions of the Statutes, on any ground whatsoever. It is all the more so since we are of the view that the postponement of the implementation of the provisions of the Statutes would impinge the constitutional and statutory rights of persons with disabilities. We hold so as there cannot be any doubt that the various vacancies over which they could have claimed appointment, had the Statutes been implemented with effect from 18.11.2018, were no longer available as on 08.11.2021. Similarly, the possibility of similar and identical vacancies not arising in the respective schools in the near future cannot also be

ruled out. The case of the petitioner in W.P.(C) No.17632 of 2021 is one which would demonstrate the prejudice that would be caused to persons with disabilities on account of the postponement of the implementation of the provisions in the Statutes till 8.11.2021. As noted, admittedly, the petitioner in the said case was a person qualified to be considered for appointment to the post of High School Assistant in Hindi and eligible to be considered against the 4% quota earmarked for persons with disabilities in aided schools in terms of the 2016 Act. It is also admitted that there was a vacancy of High School Assistant in Hindi in the school arrayed as the sixth respondent in the said writ petition and the same was filled up on 15.07.2021. Had the provisions of the Statutes been implemented with effect from 18.11.2018, the said vacancy could not have been filled up by appointing any other person, had the school invited applications for appointment against the said post and had the petitioner preferred an application in response to the same.

29. The stand of the Government that implementation of the provisions of the Statutes, if not postponed, a portion of the teachers who were appointed violating Ext.P1 order will have to be terminated, is a sympathetic stand. The question is whether a sympathetic and equitable stand can be taken by the Government in a case of this nature. The learned Single Judge dealt with this aspect elaborately. Paragraph 32 of the judgment of the learned Single Judge dealing with the same reads thus:

"32. The contention of the 1st respondent that the rights of persons, who were appointed after issuance of Ext.P1 would be affected, if the rights of the PwD are protected, cannot be sustained. It appears that the State is banking on equity to support the stand. The Apex Court in *B.Premanand and Ors. v. Mohan Koikal and Ors.* (supra) had held that when there is a conflict between law and equity, it is the law which is to prevail. Equity can only supplement the law when there is a gap in it but cannot supplant the law. In *Madamanchi Ramappa v. Muthaluru Bojjappa*, the Apex Court has observed that what is administered in courts is justice according to law and considerations of fair play and equity, however important they may be, must yield to clear and express provisions of the law. In *Council for Indian School Certificate Examination v. Isha Mittal*, it was held that considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law. In *P.M Latha v. State of Kerala*, it was held that Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law. In *E. Palanisamy v. Palanisamy*, it was held that Equitable considerations have no place where the Statute contained express provisions. The Managers, as well as the Government, were well aware of the implications of Ext.P1 with effect from 18.11.2018. If any appointments have been made in express violations of the Government Order, it can only be reckoned that the appointments were made to flout the order and to deny the PwD, who are the beneficiaries of such an order, the benefits to which they were entitled to. The persons who are suffering from disabilities cannot be made to suffer even further due to the vagaries of men. Clearly the attempt is to

delay the implementation of the Law enacted by the Parliament and the law settled by the Apex Court as well as this Court and later contend that due to fait accompli, no benefit can be granted to PwDs.”

As noted, the view taken by the learned Single Judge on the facts of the present case is that sympathetic and equitable considerations have no place where the Statutes contain express provisions. We are in complete agreement with the view expressed by the learned Single Judge. As sympathy has no role to play while construing a statutory provision and the constitutional courts cannot ignore statutory provisions and binding decisions solely on equitable consideration or on misplaced sympathy, the contention taken by the Government in this regard cannot be accepted [See also *Maruti Udyog Ltd. v. Ram Lal*, (2005) 2 SCC 638]. As already demonstrated with reference to the facts in W.P.(C) No17632 of 2021, the postponement of the decision of the Government to implement the provisions of the Statutes and Ext.P1 order would affect adversely the interests of persons with disabilities. In other words, the learned Single Judge cannot be found fault with for having issued directions to implement the provisions of the Statute with effect from 18.11.2018.

30. Now let us deal with the contentions advanced by the learned counsel for the parties. As noted, the main contention advanced by the learned counsel for the appellants was that teachers appointed in aided schools after 18.11.2018 who would be affected by the reliefs sought for in the writ petitions should have been arrayed as parties to the writ petitions either personally or in a representative capacity. No doubt, the rule audi alteram partem is one of the basic pillars of natural justice, but it is not an absolute rule. In a case where the Court finds that a fair hearing of the affected would not make any difference in the decision proposed, the decision cannot be held to be bad merely for the reason that persons who are likely to be affected were not heard [See *Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise*, (2015) 8 SCC 519]. As noted, it is a case where the court found that the appointments have been made not only flouting the provisions contained in the Statutes and frustrating the constitutional as also the statutory rights of persons with disabilities, and violating the directions issued by the Apex Court and this Court. There cannot be any doubt to the proposition that if an appointment is made contrary to a statutory provision, it is non-est in the eye of law, which renders the appointment to be a nullity [See *Ashok Kumar Sonkar v. Union of India and Others*, 2007 KHC 3513]. Of course, all the appointments cannot be said to be illegal and it is on account of the said reason that the learned Single Judge did not set at naught all the appointments. Instead, the learned Single Judge only directed that appointments already made after 18.11.2018 can be approved after complying with the provisions of the Statutes. In other words, the learned Single Judge has only interfered with the appointments made otherwise than in accordance with the provisions of the Statutes which are non-est in the eye of law. In the above circumstances, according to us, the impugned judgment is not liable to be interfered with on the ground that the appointees were not parties to the writ petitions. We take this

view also for the reason that even though it was contended that the teachers who were appointed after 18.11.2018, should have been arrayed as parties to the writ petitions, none have argued that appointments made otherwise than in accordance with the Statutes are valid or that such appointees, had they been made parties, could have protected their appointments on any ground, whatsoever.

31. True, Rule 148 of the Rules of the High Court of Kerala provides that all persons directly affected by the reliefs sought for in the writ petition shall be made parties to the writ petition. Let us now consider the question as to whether the teachers who are appointed in aided schools after 18.11.2018, otherwise than in accordance with Ext.P1 order of the Government can be said to be persons affected by the decision in the writ petitions. It was vehemently argued by the learned counsel for the appellants that going by the scheme of the Kerala Education Act and the KER, appointments confer on teachers a title to the post and the approval is only a formality. True, Section 11 of the Kerala Education Act confers power on the Managers to make appointments in aided schools. The said provision reads thus:

11.Appointment of teachers in aided schools-Subject to the rules and conditions laid down by the Government, teachers of aided schools shall be appointed by the managers of such schools from among persons who possess the qualifications prescribed under Section 10.

(underline supplied)

As evident from the extracted provision, the power of the Manager to make appointment in aided schools is not absolute, and it can only be in accordance with the rules and conditions laid down by the Government. In Eravannoor A.U.P. School v. State of Kerala, 2011 (3) KLT SN 89 (C.No.91), it has been clarified by this Court that conditions as provided for in Section 11 of the Kerala Education Act can be imposed by executive orders also. Paragraph 21 of the said judgment reads thus:

The judgments referred to above pertain to the interpretation of the expression "qualifications prescribed under S.10" occurring in S.11. In spite of the fact that the said expression contained the word "prescribed", this court did not accept the contention that it could be prescribed only by rules. We are concerned with the expression "conditions laid down by the Government" occurring in S.11. The word "prescribed" is not seen in that expression, though the word "prescribed" is used when it speaks of the qualifications. Therefore, it cannot be said that 'conditions' could be laid down only by Rules. S.11 speaks of "subject to the rules and conditions laid down by the Government". If the conditions could be laid down only by Rules, it was sufficient to say "subject to the rules laid down by the Government". This is a clear indication that 'conditions' could be laid down even by executive orders.

That apart, in terms of Rule 9(1) of Chapter III KER, the Manager is responsible

for the conduct of the school in accordance with the provisions of the Kerala Education Act and the KER as also the orders issued by the Government and the Department from time to time in conformity with the provisions of the Act and the Rules. The said provision reads thus:

Duties and powers of the managers of Aided Schools – (1) The Manager shall be responsible for the conduct of the school strictly in accordance with the provisions of the Kerala Education Act and the Rules issued thereunder. He shall also abide by the orders that may be issued from time to time by the Government and the Department in conformity with the provisions of the Act and the rule issued thereunder.

The appellants do not have a case that the Government has no authority to issue an order in the nature of Ext.P1 or that the same is not one in conformity with the provisions contained in the Kerala Education Act and the KER. If that be so, the appointments made by the Manager after 18.11.2018 violating Ext.P1 order, are illegal. Be that as it may, as per the provisions contained in the Chapter XIVA KER, the appointments made by the Managers are to be approved by the educational officer concerned. Rule 8(2) of Chapter XIVA KER provides that the educational officer may approve the appointment, if it is in accordance with the provisions of the Act, the Rules and the orders issued by the Government or the Director from time to time. Rule 8(2) reads thus:

8(2) The Educational Officer on receipt of the appointment order and other records mentioned in sub rule (1) may approve the appointment if it is in accordance with the provisions of the Act, the Rules and orders issued by the Government or the Director from time to time. After approval one copy shall be forwarded by the Educational Officer to the teacher through the Manager and another copy forwarded to the Manager to be filed in the school records. The approval may be given as expeditiously as possible [at any rate not later than 30 days from the date of receipt of the appointment order and other documents mentioned in sub-rule(1)].

In the light of the extracted Rule, inasmuch as appointments made in aided schools after 18.11.2018 otherwise than in accordance with Ext.P1 order being not in accordance with the Kerala Education Act and the KER, they are not liable to be approved. If that be so, according to us, the teachers who are appointed in aided schools after 18.11.2018 otherwise than in accordance with Ext.P1 order cannot be heard to contend that they would be affected by the decision in the writ petition and they should have therefore been arrayed as parties to the writ petition. In the light of the aforesaid discussion, there is no merit in the contention that a teacher would get title to hold the post on appointment and the approval cannot be interfered with, unless the appointment is challenged and set aside. There is no substance in the argument advanced based on the decision of the Apex Court in Civil Appeal Nos.551-553 of 2023 also. True, that was a case where this Court set aside a notification issued by the corporate educational agency running a few aided colleges in a proceedings in which all the teachers

who were appointed pursuant to the notification were not arrayed as parties and the decision of this Court as affirmed in appeal was set aside by the Apex Court in the said case without examining the correctness of the decision on agreement between the parties, leaving open all the questions raised in the matter. True, in the judgment rendered in the said case, there was an observation to the effect that the teachers appointed in the selection pursuant to the notification which are set aside by the Court were not parties to the proceedings. The order in Civil Appeal Nos.551-553 of 2023 reads thus:

“Leave granted.

2. Respondent No.1 – Anu Jayapal was the writ petitioner before the High Court. She is a specially abled person, who suffers from locomotor disability to the extent of 50%. She competed for the post of Assistant Professor (English) but having not been selected, she challenged the selection before the High Court of Kerala at Ernakulam.

3. Learned Single Judge of the High Court vide judgment dated 10.05.2022 set aside the entire selection of about 60 candidates on the ground that the Institute - Sree Narayana College failed to provide 4% reservation to the disabled candidates in violation of the statutory mandate. The Division Bench of the High Court vide impugned judgment dated 29.06.2022 has affirmed the view taken by the learned Single Judge of the High Court.

4. The institute as well as the candidates, whose selection and appointment has been set aside, are before us.

5. We have heard learned Senior Counsel for the parties and carefully perused the material placed on record.

6. It appears to us that the claim of respondent No.1 – Anu Jayapal for appointment as Assistant Professor (English) against a post reserved for ‘disabled persons’ requires sympathetic consideration. Similarly, the selection and appointment of other candidates need not be interfered with especially when respondent No.1 can be accommodated against a vacant post.

7. Moreover, the aggrieved selected/appointed candidates were not parties in the proceedings before the High Court and their selection/appointment has been set aside without hearing them.

8. We, accordingly, without going into the rival contentions, deem it appropriate to invoke our powers under Article 142 of the Constitution and dispose of these appeals with the following directions:

(i). Respondent No.1 - Anu Jayapal shall be appointed as Assistant Professor (English) with effect from 01.01.2021 but without payment of any arrears though her pay shall be notionally fixed;

(ii). Respondent No.1 - Anu Jayapal shall rank junior-most amongst those Assistant Professors(English), who were appointed on 01.01.2021 or prior

thereto; and

(iii). The Institute shall, thus, be at liberty to proceed for further recruitments in accordance with law.

9. The judgment of the learned Single Judge dated 10.05.2022 as well as the Division Bench of the High Court dated 29.06.2022 are set aside. Consequently, the appellants whose selection and appointments have been quashed shall continue in service.

10. The appeals stand disposed of in the above terms.

11. The question of law is kept open to be decided in an appropriate case.

12. As a result, pending interlocutory applications also stand disposed of.”

As evident from the extracted judgement, the judgment was set aside not on the ground that the appointed teachers were not made parties to the writ petition, but on agreement between the parties, after leaving open the various questions raised in the matter. The said judgment, according to us, may not be of any benefit to the teachers appointed in aided schools after 18.11.2018 otherwise than in accordance with Ext.P1 order which are yet to be approved by the educational officers concerned. Even if it is assumed that the decision of the Apex Court referred to above is one rendered on the basis that affected persons were not arrayed as parties to the writ petitions, according to us, the judgment may not be of any use to the teachers involved in this case as unlike teachers involved in this case, the teachers involved in the case dealt with by the Apex Court are persons who have acquired a title to the post in which they were appointed inasmuch as their appointments have been approved by the concerned universities. The contention that the impugned judgment is bad inasmuch as the teachers who were appointed after 18.11.2018 were not arrayed as parties to the writ petitions, in the circumstances, fails and we reject the same.

32. Let us now consider the contention advanced by the learned counsel for the appellants that the impugned judgment, insofar as it was held therein that the appointments of teachers and non-teaching staff made flouting Ext.P1 order after 18.11.2018 which have been approved need not be unsettled, treats equals unequally and as such, the teachers and non-teaching staff whose appointments are not approved, are entitled to be treated at par with teachers whose appointments are approved. The essence of the argument is that the impugned judgment contravenes the fundamental right of teachers who are appointed after 18.11.2018, but whose appointments have not been approved till date. The principle that a judicial verdict cannot be said to affect the fundamental rights of a citizen is one settled by a Nine Judge Bench of the Apex Court in Naresh Shridhar Mirajkar (supra). Paragraph 37 of the said judgment reads thus:

“37. The next question which calls for our decision is : does the impugned order contravene the fundamental rights of the petitioners under Article 19(1)? In dealing with this question, it is essential to bear in mind the object with which

the impugned order has been passed. As we have already indicated, the impugned order has been passed, because the learned Judge was satisfied that the interests of justice required that Mr Goda should not be exposed to the risk of excessive publicity of the evidence that he would give in court. This order was passed by the learned Judge after hearing arguments from both the parties to the suit. Thus, there is no doubt that the learned Judge was satisfied that in order to be able to do justice between the parties before him, it was essential to grant Mr Goda's request for prohibiting the publication of his testimony in the newspapers from day to day. The question is: can it be said that an order which has been passed directly and solely for the purpose of assisting the discovery of truth and for doing justice between the parties, infringes the fundamental rights of the petitioners under Article 19(1)?"

Be that as it may, by raising the said argument, what is claimed by the appellants is parity of treatment. As noticed, all the appointments made after 18.11.2018 otherwise than in accordance with the provisions of the Statutes are illegal. If the appointments are illegal, the question is whether such teachers are entitled to get their appointments approved merely for the reason that the learned Single Judge directed that some of such appointments which are already approved need not be unsettled. We have no doubt in our mind that the said question needs to be answered in the negative. We are fortified in the said view by several judgments of the Apex Court including the judgment in *Basawaraj v. Land Acquisition Officer*, (2013) 14 SCC 81. Paragraph 8 of the said judgment reads thus:

8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (*Vide Chandigarh Admn. v. Jagjit Singh*, *Anand Buttons Ltd. v. State of Haryana*, *K.K. Bhalla v. State of M.P.* and *Fuljit Kaur v. State of Punjab*)."

The contention that the impugned judgment treats equals unequally also, therefore, fails and we reject the same.

Section 38 of the 1995 Act reads thus:

"38. (1) The appropriate Governments and local authorities shall by notification formulate schemes for ensuring employment of persons with disabilities, and such schemes may provide for-

- a. The training and welfare of persons with disabilities;
- b. The relaxation of upper age limit;
- c. Regulating the employment;
- d. Health and safety measures and creation of a non-handicapping environment in places where persons with disabilities are employed;
- e. The manner in which and the person by whom the cost of operating the schemes is to be defrayed; and
- f. Constituting the authority responsible for the administration of the scheme. "

The argument advanced by Dr.George Abraham based on the said provision is that the scheme of the 1995 Act is that employment of persons with disabilities is to be ensured in accordance with the schemes to be formulated by the appropriate Governments in terms of Section 38 of the 1995 Act, and in the absence of any scheme by the State Government in terms of the said provision, the 1995 Act cannot be implemented. There is no substance in this argument. Section 37 of the 2016 Act is a provision corresponding to Section 38 of the 1995 Act. Section 37 reads thus :

"37. Special schemes and development programmes.—The appropriate Government and the local authorities shall, by notification, make schemes in favour of persons with benchmark disabilities, to provide,—

- a. five per cent. reservation in allotment of agricultural land and housing in all relevant schemes and development programmes, with appropriate priority to women with benchmark disabilities;
- b. five per cent. reservation in all poverty alleviation and various developmental schemes with priority to women with benchmark disabilities;
- c. five per cent. reservation in allotment of land on concessional rate, where such land is to be used for the purpose of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres."

A combined reading of Section 38 of the 1995 Act and Section 37 of the 2016 Act would show that the schemes provided for in the said provisions are schemes intended for the welfare and empowerment of persons with disabilities and the same have nothing to do with the reservation in the appointments to be made in the Government and other establishments as provided for in the Statutes.

34. As noted, one of the contentions raised by Sri. Kurian George Kannanthanam

was that W.P.(C) No.19808 of 2021 is not maintainable as the same was one instituted by a person who does not have a case that any of his rights, constitutional or statutory, are infringed on account of the inaction on the part of the State Government in implementing the provisions of the Statutes and Ext.P1 order. True, W.P.(C) No.19808 of 2021 is one instituted by a person styling himself to be the President of an association of persons with disabilities and the reliefs claimed therein do not in any manner benefit him. According to us, it is unnecessary to examine the said contention as the writ petitions disposed of along with W.P.(C) No.19808 of 2021 are instituted by persons with disability who are entitled to seek the reliefs claimed by the petitioner in W.P.(C) No.19808 of 2021. Among the remaining writ petitions, W.P.(C) No.11673 of 2022 is one instituted by a few persons with disability seeking reliefs of general nature which would benefit them as also other similarly placed persons with disability and W.P.(C) No.17632 of 2021 is one instituted by a person with disability seeking a relief of individual nature. In respect of W.P.(C) No.11673 of 2022 also, it was urged by the learned Senior Counsel that the petitioners are not entitled to seek reliefs of general nature. We do not think that there is any impediment in law for a person to claim a relief which would benefit him and other similarly placed persons also, at this era of public interest litigation as courts are empowered to issue orders for the benefit of the parties who are not before it as well, if it is found that they are unable to approach the court for reliefs on account of social and economic barriers.

35. Section 36 of the 2016 Act reads thus:

"36. Special employment exchange.—The appropriate Government may, by notification, require that from such date, the employer in every establishment shall furnish such information or return as may be prescribed by the Central Government in relation to vacancies appointed for persons with benchmark disability that have occurred or are about to occur in that establishment to such special employment exchange as may be notified by the Central Government and the establishment shall thereupon comply with such requisition."

The argument advanced by Sri.V.A.Muhammed based on the said provision is that it is obligatory on the part of the Government to prescribe by notification the jurisdiction of special employment exchanges from where the list of persons with benchmark disability could be obtained by the Managers in order to comply with the requirements of the Statutes, and inasmuch as notifications as provided for under Section 36 have not been made, the Managers cannot be blamed for not having appointed persons with disabilities in their respective establishments. The learned Special Government Pleader asserted that the provisions of Section 36 have been complied with by the Government as early as on 18.03.2011 itself in terms of G.O.(MS) No.52 of 2011.

Be that as it may, we do not find any merit in this argument. The provision in the 1995 Act corresponding to Section 36 of the 2016 Act was Section 34, which reads thus:

34. (1) The appropriate Government may, by notification. Require that from such date as May he specified. By notification. The employer in every establishment shall furnish such information or return as may be prescribed in relation to vacancies appointed for person, with disability that have occurred or are about to occur in that establishment to such Special Employment Exchange as may be prescribed and the establishment shall thereupon comply with such requisition.

(2) The form in which and the intervals of time for which information or returns shall be furnished and the particulars, they shall contain shall be such as may be prescribed.

Rules 36 to 41 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 were rules brought into force to give effect to Section 34 of the 1995 Act. Rules 36 to 41 of the said Rules read thus:

"36.Computation of vacancies.—For the purpose of computation of vacancies for persons with disabilities in Group A, B, C, and D posts, the manner of computation of vacancies shall be such as may be determined by the Government by instructions or orders in this regard.

37. Notification of vacancies to the Special Employment Exchanges.—(1) The following vacancies shall be notified to the Special Employment Exchanges, namely:—

a. Vacancies in posts of a technical and scientific nature carrying a basic pay of Rs. 1400 or more per month occurring in establishments in respect of which the Central Government is the appropriate Government under the Act, and

b. Vacancies which an employer may desire to be circulated to the Special Employment Exchanges outside the State or Union territory in which the establishment is situated, shall be notified to such Special Employment Exchanges as may be specified by the Central Government by notification in the Official Gazette, in this behalf. A copy of the notification of vacancies shall be sent to the Vocational Rehabilitation Centre for Handicapped concerned.

(2) Vacancies other than those specified in sub-rule (1) shall be notified to the local Special Employment Exchange concerned. A copy of the notification of vacancies shall also be sent to the Vocational Rehabilitation Centre for Handicapped concerned.

38.Form and manner of notification of vacancies.—The vacancies shall be notified in writing to the Special Employment Exchange concerned, and the following particulars shall to furnished in respect of each type of vacancy, namely:—

(1) Name and address of the employer.

(2) Telephone number of the employer, if any.

(3) Nature of vacancy—

(a) Type of workers required (Designation)

- (b) (i) Description of duties;
- (ii) Physical requirements (i.e., job involves visual accuracy, frequent movement/ walking, continuous long hours sitting, etc.)
- (c) Qualifications required—
 - (i) Essential,
 - (ii) Desirable
- (d) Age-limits, if any
- (e) Whether women are eligible
- (4) Number of vacancies—

Reserved for physically handicapped persons

Orthopedically	Visually	Hearing
Handicapped	Handicapped	Impairment

- (a) Regular
- (b) Temporary.
- (5) Pay and allowances.
- (6) Place of work (Name of town/village and district in which it is situated.)
- (7) Probable date by which the vacancy will be filled.
- (8) Particulars regarding interview/test of applicants—
 - (a) Date of interview/test
 - (b) Time of interview/test
 - (c) Place of interview/test
 - (d) Designation and address of the person to whom applicants should report.
- (9) Any other relevant information— The vacancies shall be re-notified in writing to the concerned Special Employment Exchange if there is any change in the particulars already furnished to the Special Employment Exchange and Vocational Rehabilitation Centre for Handicapped under this rule.

39. Time-limit for the notification of vacancies.—

- (1) Vacancies, required to be notified to the local Special Employment Exchange, shall be notified at least thirty days before the date on which applicants will be interviewed or tested where interviews or tests are held, or the date on which vacancies are intended to be filled, if no interviews or tests are held.
- (2) Vacancies required to be notified to the Special Employment Exchange

notified under sub-rule (1) of Rule 37 shall be notified at least three weeks before the date on which applicants will be interviewed or tested where interviews or tests are held, or the date on which vacancies are intended to be filled, if no interviews or tests are held.

(3) An employer shall furnish to the concerned Special Employment Exchange, the results of selection within fifteen days from the date of selection.

40 Submission of returns.—(1) An employer shall furnish to the local Special Employment Exchange quarterly returns in Form DPER I and biennial returns in Form DPER II as may be amended from time to time.

(2) Quarterly returns shall be furnished within thirty days of the due dates, namely, 31st March, 30th June, 30th September and 31st December.

(3) Biennial returns shall be furnished within thirty days of the due date as notified in the Official Gazette.

41. Form in which record to be kept by an employer.—An employer shall maintain the record of employees with disabilities in Form DPER III, as may be amended from time to time.”

A close reading of Section 36 of the 2016 Act in the background of the corresponding provisions contained in Section 34 of the 1995 Act and the Rules made under the 1995 Act as extracted above, would indicate beyond doubt that Section 36 of the 2016 Act has nothing to do with the reservation for appointment in favour of persons with disabilities provided for in the Statutes. We hold so, as we find that the said provision is one intended to obtain from the employers such information as may be prescribed by the Central Government in relation to appointments of persons with disabilities already made and to be made in terms of the Statutes and to ensure compliance of the provisions of the 2016 Act. The argument in this regard, in the circumstances, is only to be rejected and we do so.

36. Another argument advanced by Sri.V.A.Muhammed was that the posts suitable for persons with disabilities in aided schools have been identified only in terms of Ext.R1(a) order on 25.6.2022 and the Managers cannot, therefore, be compelled to make appointments retrospectively. As already noticed, this was one of the contentions raised in the appeal preferred against Ext.P2 judgment and the same was repelled by the Division Bench. Paragraph 15 of the judgment of the Division Bench dealing with the same reads thus:

“15. The next contention urged is that when the posts were not identified, the posts had already been identified in different establishments including educational institutions run by the Government. But the Government did not chose to direct the aided institutions to comply with the provisions of the Act. In fact, when posts in schools and colleges were notified, it equally applies to aided institutions as well. But they did not comply with the provisions of the Act. Ext.P8 is only intended to ensure that the identification of posts which has already been

done under the provisions of the 1995 Act, would apply to aided educational institutions as well, and they have been directed to fill up the backlog vacancies.”

In the light of the judgment of the Division Bench aforesaid which has become final, according to us, the appellants cannot be heard to contend that the appointments were not effected since the posts were not identified. We take this view also in the light of the decision of the Apex Court in *Government of India v. Ravi Prakash Gupta*, (2010) 7 SCC 626, wherein it was held that the reservation provided for in Section 33 of the 1995 Act is not dependant on identification of the posts at all.

37. Another contention raised was that there is dearth of qualified hands among the persons with disabilities. There is no convincing data before the Court as to the particulars of qualified hands among persons with disabilities aspiring appointments in aided schools. Even though it was contended by the appellants that qualified hands are not available among the persons with disabilities, there is nothing on record to indicate that Manager of any aided schools in the State has ever attempted to find out whether there are qualified hands among the persons with disabilities by inviting applications from persons with disabilities for appointment. As such, it can only be presumed, until the contrary is established, that there are sufficient number of qualified hands among the persons with disabilities for appointment to various teaching posts in the aided schools in the State.

38. Another argument advanced by the learned counsel for the appellants was that Ext.P1 order issued by the Government is only an order directing the concerned administrative departments to issue instructions to the appointing authorities of aided educational institutions to make appointments in their respective institutions in tune with the provisions of the Statutes. According to the appellants, the directions contained in Ext.P1 order have not been complied with by the concerned administrative departments of the State Government by issuing specific directions to the appointing authorities, and the Managers of the schools cannot, therefore, be found fault with for having not complied with Ext.P1 order with effect from 18.11.2018 itself. We do not find any merit in this contention also, as it was found by this Court in Ext.P2 judgment that even without a direction from the Government, it was obligatory on the part of the Managers of aided schools to comply with the requirements of the Statutes as regards the reservation in favour of persons with disabilities.

39. It is unnecessary to consider the contention raised by Sri.Elvin Peter that W.P. (C) No.17632 of 2021 is not maintainable insofar as the petitioner therein seeks a writ of mandamus directing the sixth respondent in the said case to comply with the Statutes, as the said relief has not been granted to the petitioner therein. Another contention raised by Sri.Elvin Peter is that all the appointments made in aided schools after the introduction of the Statutes, otherwise than in accordance with the provisions therein, are bad and such appointees cannot be classified differently based on the date of the decision taken by the Government

to implement the provisions of the Statutes and deny approval to some among them. We do not find any merit in this argument. No doubt, the appointments made in the aided educational institutions in the State after the introduction of the Statutes otherwise than in accordance with the provisions therein are illegal, and there cannot be a cut-off date to save a portion of such appointments and to unsettle the remaining. But, the fact remains that the appointments made otherwise than in accordance with the provisions of the Statutes upto 18.11.2018, were not under challenge in the writ petitions. The challenge in the writ petitions was against the appointments made after 18.11.2018. The learned Single Judge found, as contended by Sri.Elvin Peter, that the appointments were illegal. Consequently, the learned Single Judge disposed of the writ petitions directing the educational officers to defer the process of approval of such appointments until the provisions of the Statutes are complied with. It is not a case where a cut-off date has been fixed by the Government for denying the approval of certain appointments made in aided educational institutions in the State. On the other hand, it is a case where there was a doubt as to whether the provisions in the Statutes would apply to aided educational institutions, as appointments in such institutions are governed by the Kerala Education Act and the KER which do not impose a similar restriction on Managers as done in the Statutes. Ultimately, it was only on 18.11.2018, the Government conceded to the position that the provisions of the Statutes need to be extended to aided educational institutions as well, and took a decision to that effect, so that, the same would bind the appointing authorities of such institutions in terms of the provisions contained in the Kerala education Act and the KER. In a case of this nature, according to us, the contention that the date from which the Government decided to extend the provisions of the Statutes to aided educational institutions in the State is a cut-off date to classify teachers who were appointed prior to and after the said date and therefore, the Court should examine whether the said cut-off date has any rational basis having a nexus to the objects to be achieved, is thoroughly misplaced. Of course, the said argument would certainly apply against the decision of the Government to postpone the date of implementation of the provisions of the Statutes from 18.11.2018 to 8.11.2021, and the learned Single Judge has rightly applied the argument holding that the said decision is bad.

40. As noted, the argument advanced by Sri.R.K.Muraleedharan was that the reservation provided for in the Statutes in favour of persons with disabilities is only on the total number of vacancies in the establishment and not in all cadres of the establishment. It is seen that such an argument is raised since Ext.R1(a) order issued by the Government in implementation of Ext.P5 order stipulates that the reservation shall be provided in all cadres identified as suitable for appointment of persons with disabilities. As already indicated, the said Government Order was not under challenge before the learned Single Judge. As pointed out by the learned Special Government Pleader, the said order is now under challenge in different writ petitions on various grounds. Inasmuch as the

said Government Order was not under challenge before the learned Single Judge and the same is presently under challenge in different writ petitions, it may not be appropriate for us to deal with the said contention in this batch of cases, and it is suffice to clarify that the parties aggrieved by Ext.R1(a) order are free to challenge the same, if so advised.

41. As noticed, the argument advanced by Sri.John Joseph Vettikad was that appointments have already been made in compliance with the provisions of the Statutes in some of the schools. Nevertheless, the appointments subsequently made are not being approved in the light of the impugned judgment. We do not think it necessary to examine the said contention also, as it is clarified in Ext.R1(a) order that the directions therein apply only to schools where the provisions of the Statutes have so far not been implemented.

42. The learned Senior Counsel, Sri.K.Ramkumar argued that the Kerala Education Act and the KER provide for appointment of teachers in aided schools in a particular manner and the same cannot be varied or overridden by executive orders. There is no merit, according to us, in this argument, as the said issue has been concluded by this Court in Ext.P2 judgment holding that even without any direction from the Government, the Managers of aided schools in the State were obliged to comply with the requirements of the Statutes. The argument raised by the learned Senior Counsel based on the decision of this Court in Vasudeva Shenoy is also without any substance as the question considered therein was whether the Court could issue a direction to implement a statutory provision which the concerned executive body has chosen not to implement. The said question has been answered in the negative. But, the said principle cannot have any application to the facts of the present case, as the provisions of the Statutes have been given effect to by the concerned executive Government. Once the provisions of the Statute are brought into force, the obligations arising thereunder could certainly be enforced through the process of the Court.

43. The upshot of the discussion aforesaid is that none of the contentions urged by the appellants to challenge the impugned judgment are sustainable in law.

44. Ordinarily, in the light of the finding that the contentions raised in the appeals are not sustainable in law, the appeals should have been dismissed. But, having regard to the peculiar facts of these cases, we are of the view that a few additional directions are required to be issued in these appeals in the interests of justice for the various reasons stated hereunder.

45. As noted, the provisions of the Statutes, as regards the reservation in favour of persons with disabilities, should have been implemented in aided schools right from the day on which the 1995 Act was notified. But, it is a fact that the same have not been implemented until the said Statute was replaced by the 2016 Act. As in the case of the 1995 Act, even the provisions of the 2016 Act as regards the reservation in favour of persons with disabilities have not been implemented in the State. The materials indicate that despite the judgment of this Court in W.P.

(C) No.30334 of 2013, the State was maintaining throughout that the Kerala Education Act and the KER are to be amended to extend the provisions of the Statutes to aided schools in the State. It was later, in the light of the direction issued by the Apex Court in Justice Sunanda Bhandare Foundation, the Government took Ext.P1 decision on 18.11.2018. As observed by us in the preceding paragraphs, in the absence of any interim order in the writ petitions instituted before this Court challenging the said order, the Government should have ensured compliance of Ext.P1 decision forthwith thereafter. Had this been done, all the subsequent litigations could have been avoided. Now, the learned Single Judge has directed, in terms of the impugned judgment, to give effect to Ext.P1 decision and to make up the backlog appointments in the vacancies arising from 18.11.2018 itself. Even though we have decided to affirm the decision of the learned Single Judge, we find that although the decision of the learned Single Judge alerted the State, its officials in the Department of General Education as also the Managers of aided schools, the materials on record in these cases and the submissions made by the learned counsel for the parties on either side indicate that ever since this Court stayed Ext.P4 order, the affairs relating to appointment in aided schools in the State are in utter chaos. Even though the interim order passed in this regard by this Court was later clarified to the effect that the same will not preclude approval of the appointments to posts not identified as suitable for appointment of persons with disabilities, since most of the cadres in aided schools are identified as suitable for appointment of persons with disabilities and since it was decided that the first among the 33 vacancies that arose during the currency of the 1995 Act and the first among the 25 vacancies that arose during the currency of the 2016 Act shall be earmarked for persons with disabilities, having regard to the fact that at least one vacancy of teacher in all cadres must have arisen in every aided school in the State, the position cannot be said to have improved in any manner on account of the modification of the interim order. At the same time, as evident from the data furnished in Ext.P4 communication, thousands of teachers appointed after 18.11.2018 were working since then in their respective schools without salary. That apart, it was brought to our notice that there are large number of instances where the appointments which could have otherwise been approved, were not approved by the educational officers for one or other reasons, and although the appeals and revisions preferred against such decisions of the educational officers were allowed subsequently, in the light of the interim order passed by the learned Single Judge on 23.9.2021 in W.P.(C) No.19808 of 2021, even the said appointments could not be approved. It was submitted by the learned Special Government Pleader that on an average, about 3500 vacancies would arise in aided schools every year. There is nothing on record to indicate whether any appointments have been made at all by the Managers in the said vacancies in the academic year 2022-2023 in the light of Ext.P5 order interdicting appointments before complying with the provisions of the Statutes and before the backlog in the appointments are made up and if not, as to how the dearth of the said teachers could be made up in aided schools during the said academic year. The

academic year 2022-2023 is going to be over soon. If there are sufficient number of eligible and qualified persons with disabilities in the State to cover the backlog appointments as also the future appointments, there would be no issues while complying with the directions contained in the impugned judgement, but if sufficient number of eligible and qualified persons with disabilities are not available, naturally the vacancies are to be carried forward to the next year and if only eligible and qualified hands are not available in the next year also, the vacancies could be filled up by other candidates. In other words, those vacancies cannot be filled up at least for almost two years. That means, the fate of the teachers who are appointed after 18.11.2018 and whose appointments are not approved till date can be decided only after about two years and till then, they will have to work without salary and the schools will have to be run with them. That apart, there would not be any teachers in the vacancies that arose in the academic year 2022-2023 and in the subsequent academic years, as before deciding the fate of teachers already appointed, appointments cannot be made to the said vacancies. In short, we feel that if we leave these matters without any additional directions, the academic interests of the students would be adversely affected. In the circumstances, we deem it appropriate to modify the impugned judgment and dispose of the appeals with the following additional directions/clarifications :

1) The Educational Officers in the State shall approve the appointments made in the vacancies earmarked for persons with disabilities that arose after 18.11.2018 and before 08.11.2021, which are otherwise in order, provisionally, treating the vacancies as temporary, on condition that such approval would be valid only till the incumbents who are regularly appointed against those vacancies take charge, and shall take necessary action for disbursement of the pay and allowances due to them.

2) If for any reason regular appointments cannot be made in the vacancies referred to in direction (1) above even after following the detailed procedure prescribed by the Government in Ext.R1(a) order, such vacancies can be treated as substantive and the approvals already granted in respect of the same can be made permanent.

3) Even if regular appointments are made in the vacancies referred to in direction (1), the teacher concerned shall be absorbed against the next immediate vacancy in the same school or in any of the schools under the same management, if they are qualified to be considered for appointment against such vacancies, treating the teachers as claimants under Rule 51A of Chapter XIVA KER.

The Managers of all aided schools would be free to fill up the vacancies that arose after 08.11.2021 on daily wage basis until the directions contained in the impugned judgment and this judgment are complied with in full.

Interlocutory applications, if any, pending in the appeals shall stand closed.