

HIGH COURT OF DELHI**Bench: Chief Justice Satish Chandra Sharma and Justice Sanjeev Narula****Date of Decision: 01 November 2023****W.P.(C) 17460/2022**

COURT ON ITS OWN MOTION

..... Petitioner

versus

KENDRIYA VIDYALAYA SANGATHAN
AND ORS

..... Respondents

W.P.(C) 665/2023 and CM APPL. 2585/2023

NATIONAL ASSOCIATION OF THE DEAF

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Sections, Acts, Rules, and Articles:

Section 2(f), 17, 34 of the Rights of Persons with Disabilities Act, 2016 (RPwD Act)

Subject: Violation of the statutory provisions of the RPwD Act, particularly related to the reservation of posts for Persons with Disabilities (PwDs), including Deaf and Hard of Hearing Persons, in advertisements issued by Kendriya Vidyalaya Sangathan (KVS).**Headnotes:**

Public Interest Litigation – Violation of Rights of Persons with Disabilities Act, 2016 (the RPwD Act) – Kendriya Vidyalaya Sangathan (KVS) issued Advertisements No.15/2022 & 16/2022 for various posts – Alleged violation of statutory provisions under the RPwD Act concerning reservation for Persons with Disabilities (PwD), especially for deaf and

hard of hearing persons – Matter brought before the High Court of Delhi. [Para 1-7]

Statutory Provisions – Sections 2(f), 17, 34 of the RPwD Act mandating reservation for Persons with Disabilities (PwD) – 4% reservation mandated, with 1% reserved for deaf and hard of hearing persons – KVS alleged to have ignored these provisions in its advertisements for various posts. [Para 10-11]

Reservation Compliance – KVS relied on an outdated notification dated 29.07.2013 for reservation calculation, ignoring the operative notification dated 04.01.2021 – No reservation provided for deaf and hard of hearing persons in certain posts as required by the RPwD Act – KVS’s action found contrary to the mandatory statutory provisions. [Para 13-25]

Recruitment Process – Completed recruitment process under the challenged advertisements – Court’s concern over discontinuation of services for selected candidates if advertisements quashed – Direction to KVS to provide 1% reservation against total vacancies for deaf and hard of hearing persons and initiate a special recruitment drive to fill the vacancies reserved for various categories of disabled persons. [Para 30-31]

Reasonable Accommodation – Emphasis on the legislative vision of providing reasonable accommodation to persons with disabilities – KVS criticized for viewing Persons with Disabilities (PwDs) from a lens of inconvenience rather than facilitating their rights under the RPwD Act. [Para 32]

Judicial Precedent – Reference to a recent judgment directing KVS to provide 1% reservation to blind and low vision persons in line with the notification dated 04.01.2021 – Similar direction issued to KVS in the present case to clear the backlog of vacancies for deaf and hard of hearing persons within a stipulated timeframe. [Para 33-34]

Appointment Directive – Identification of specific posts like Principal, Vice-Principal, Post Graduate Teacher (PGT), etc., in the notification dated 04.01.2021 for reservation – Direction to KVS to appoint deaf and hard of hearing persons on these identified posts in accordance with the statutory provisions of the RPwD Act. [Para 35]

Referred Cases:

- National Federation of the Blind Vs. Kendriya Vidyalaya Sangthan & Ors.,
2023:DHC:7551-DB

Representing Advocates:

Mr. Dayan Krishnan, Senior Advocate (Amicus Curiae) with Mr. Sanjeevi Seshadri, Advocate

Ms. Sanchita Ain, Mr. Habib Muzaffar, and Ms. Sarah Sunny, Advocates with Ms. Manisha Sharma and Mr. Atul Kumar, ISL Interpreters

Mr. S. Rajappa and Mr. R Gowrishankar, Advocates for Respondent No.1/ KVS

Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor and Mr. Yash Upadhyay, Advocates for respondent/ UOI

J U D G M E N T**SATISH CHANDRA SHARMA, C.J.**

1. Once again, we have before us some of our fellow citizens who have been trying to secure equal and dignified treatment in the eyes of the State and on the other side, a department oblivious to its constitutional duties despite a clear expression by the legislature and clearer expression by various constitutional Courts, including the Hon'ble Supreme Court of India.

2. The present petition being W.P.(C.) No. 17460/2022 has been registered as a Public Interest Litigation (PIL) based upon a letter dated 07.12.2022 of the National Association of Deaf (NAD/ the Association) through its President Mr. A.S. Narayanan being aggrieved by Advertisements No.15/2022 & 16/2022 issued by Kendriya Vidyalaya

Sangathan (KVS) inviting applications for various posts of Principal, VicePrincipal, Post-Graduate Teacher (PGT), Trained Graduate Teacher (TGT), Librarian, Primary Teacher (Music), Finance Officer, as well as other posts.

3. The NAD in its letter dated 07.12.2022 has stated that the advertisements issued by KVS are violative of statutory provisions as contained under the Rights of Persons with Disabilities Act, 2016 (the RPwD Act).
4. The letter further states that Section 17 of the RPWD Act mandates for employing teachers, including teachers with disabilities; and Section 34 mandates 4% reservation for Persons with Disabilities (PwD), out of which 1% posts are reserved for deaf and hard of hearing persons. Section 2(f) recognizes sign language under the definition of “communication” and Section 16 requires barrier free involvement and provision of reasonable accommodation in educational institutions. The contention of the Association is that the KVS has ignored the statutory provisions as contained under the RPwD Act.
5. This Court appointed Mr. Dayanan Krishnan, Senior Advocate as Amicus Curiae to assist this Court in the matter. Earlier, Ms. Saudamini Pethe – who was a Deaf Lawyer, was appearing in the matter. She has appeared on 17.04.2023; unfortunately, she is no more; and therefore, today the Association is represented by Ms. Sarah Sunny, Advocate who is again a Deaf Lawyer, along with the Sign Language Interpreter as well as Ms. Sanchita Ain, Advocate for the Association.
6. In the other connected matter, i.e. W.P.(C.) No. 665/2023 titled ***National Association of the Deaf vs. Union of India & Ors.***, the Association

through a PIL has challenged the same Advertisements No.15/2022 & 16/2022, and therefore, both these matters are being decided by a common order.

7. The undisputed facts of the case reveal that the KVS has issued advertisement dated 02.12.2022 for direct recruitment of Officers, Teaching and Non-Teaching Staff in the KVS vide Advertisement No.15/2022 and for direct recruitment of Primary Teachers in KVS vide Advertisement No.16/2022 in the newspaper as well as on the official website.
8. The Advertisement No.15/2022 is reproduced as under:

Kendriya Vidyalaya Sangathan (HQ)
18, Institutional Area, Saheed Jeet Singh Marg, New Delhi-110016
Website: www.kvsangathan.nic.in
ADVERTISEMENT NO. 15/2022

Direct Recruitment for the posts of Assistant Commissioner, Principal, Vice Principal, PGT, TGT, Librarian and Non-Teaching post in Kendriya Vidyalaya Sangathan

Kendriya Vidyalaya Sangathan (KVS), henceforth mentioned as KVS, is an Autonomous Organization under the Ministry of Education, Department of School Education & Literacy, Government of India. It has its Headquarters office at New Delhi, 25 Regional offices located at Agartala, Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Chandigarh, Chennai, Dehradun, Delhi, Ernakulam, Gurgaon, Guwahati, Hyderabad, Jaipur, Jammu, Kolkata, Lucknow, Mumbai, Patna, Raipur, Ranchi, Silchar, Thiruvananthapuram and 1252 Kendriya Vidyalayas (KVAs) functioning all over the country including CBSE abroad. It also has five Zonal Institutes of Education & Training (ZIETs). KVAs are co-educational schools upto class 12th and focuses on holistic development of students.

KVS invites applications from Indian Citizens for filling up the posts of Assistant Commissioner, Principal, Vice Principal, PGT, TGT, Librarian, PRT (Music), Finance Officer, Assistant Engineer (Civil), Assistant Section Officer, Senior Secretariat Assistant, Junior Secretariat Assistant, Stenographer Grade II and Hindi Translator in Kendriya Vidyalaya Sangathan to apply online through the KVS website www.kvsangathan.nic.in. No other mode of submission of applications will be accepted.

The recruitment examination will be conducted through Computer Based Test (CBT). If selected, the candidates may be posted anywhere in India on initial posting on selection. Haryana.bts.in

Post-wise and Category wise break up of vacancies is as under-

1. ASSISTANT COMMISSIONER

UR	OBC	SC	ST	TOTAL	HH
28	14	07	02	52	01

2. PRINCIPAL

UR	OBC	SC	ST	TOTAL	OH	VH	HH
123	64	35	17	239	04	01	

3. Vice Principal

UR	OBC	SC	ST	TOTAL	OH	VH	HH
104	54	30	15	203	02	03	02

4. POST GRADUATE TEACHER (PGT)

S. No.	Subject	UR	OBC	SC	ST	EWS	Total	OH	VH	HH	Others*
1	HINDI	72	46	25	12	17	172	3	3	0	0
2	ENGLISH	67	42	23	11	15	158	2	3	0	0
3	PHYSICS	56	36	20	10	13	135	0	0	0	0
4	CHEMISTRY	69	45	25	12	18	169	0	0	0	0
5	MATHS	77	49	27	13	18	184	0	0	0	0
6	BIOLOGY	83	40	22	11	15	151	0	0	0	0
7	HISTORY	27	17	9	4	8	65	1	1	0	0
8	GEOGRAPHY	30	18	10	5	7	70	2	1	0	0
9	ECONOMICS	41	26	14	7	9	97	4*	3*	0	0
10	COMMERCE	30	17	9	4	8	68	4*	0	0	0
11	COMPUTER SCIENCE	59	38	21	10	14	142	0	0	0	0
12	BIO-TECH.	03	1	0	0	0	4	0	0	0	0
	TOTAL	594	375	205	99	136	1409	22	11	0	0

Note: * Including backlog vacancies

5. TRAINED GRADUATE TEACHER (TGT)

S. No.	Subject	UR	OBC	SC	ST	EWS	Total	OH	VH	HH	Others*
1	HINDI	155	101	56	28	37	377	6	6	0	0
2	ENGLISH	183	108	60	30	40	421	7	8*	0	3
3	SANSKRIT	101	66	36	18	24	245	4	5*	0	0
4	SOCIAL STUDIES	164	107	59	29	39	398	6	6	0	0
5	MATHEMATICS	175	115	63	31	42	426	20*	0	0	0
6	SCIENCE	125	82	45	22	30	304	0	0	0	0
7	P&HE	178	117	65	32	43	435	0	0	0	0
8	ART EDU.	104	67	37	18	25	251	4	0	3	4*
9	WE	140	91	50	25	33	339	4	4	3	0
	TOTAL	1305	854	471	233	313	3176	51	29	6	4

Note: * Including backlog vacancies

6. LIBRARIAN

UR	OBC	SC	ST	EWS	Total	OH	HH
146	95	53	26	35	355	6	5

7. PRIMARY TEACHER (MUSIC)

UR	OBC	SC	ST	EWS	Total	OH	VH
134	81	46*	22	30	303	5	5

Note: * Including backlog vacancies

8. FINANCE OFFICER

UR	OBC	SC	TOTAL	HH
4	1	1	6	1

9. ASSISTANT ENGINEER (CIVIL)

UR	SC	Total
01	01	02

10. ASSISTANT SECTION OFFICER

UR	OBC	SC	ST	EWS	Total	OH	VH	HH
66	42	23	11	15	156	2	2	1

11. HINDI TRANSLATOR

UR	OBC	SC	EWS	Total
7	2	1	1	11

12. SENIOR SECRETARIAT ASSISTANT

UR	OBC	SC	ST	EWS	Total	OH	VH	HH	Ex-Ser.
132	86	48	24	32	322	4	3	3	32

13. JUNIOR SECRETARIAT ASSISTANT

UR	OBC	SC	ST	EWS	Total	OH	VH	HH	Ex-Ser.
289	189	105	52	70	705	8	8	7	70

14. STENOGRAPHER GRADE I

UR	OBC	SC	ST	EWS	Total	OH	VH	Ex-Ser.
23	14	8	4	5	54	1	1	5

The schedule of ONLINE submission of application is given below:-
Commencement of Online submission on KVS website www.kvsangathan.nic.in 05.12.2022
Last Date for Online submission 26.12.2022 (23.59 Hrs)

Note:-
1. The number of vacancies advertised is tentative and may vary. They may decrease or increase.
2. Reservation for SC/ST/OBC/EWS category will be as per Govt. of India Rules.
3. Age relaxation to SC/ST/OBC/EWS & Ex-Servicemen category will be given as per Govt of India Rules.
4. For detailed information regarding eligibility criteria, age relaxation, fee, pay scales, examination centers, important instructions, scheme and syllabus of examination, mode of selection etc. candidates can visit KVS website www.kvsangathan.nic.in at home page i.e. Announcement and under Employment Notice sub-head vacancy post/ort.

EN 36/117 Haryana.bts.in JOINT COMMISSIONER (ADMIN.)

No. 1/1/2022-Admin/APTEL/22
Appellate Tribunal for Electricity
Website: www.aptel.gov.in
Corr-4, 7th Floor, SCOPE Complex, Lodhi Road
New Delhi-110003
Dated the 23rd November, 2022
EXTENSION OF LAST DATE OF VACANCY CIRCULAR

It is hereby informed that the last date of receipt of applications for the advertisement No. 1/1/2022-Admin/APTEL/22 dated 01.10.2022 published in Employment News dated 01-07 October, 2022 inviting applications for the following posts in Appellate Tribunal for Electricity, Ministry of Power, has been extended on deputation/absorption basis, has been extended to 13.12.2022.

Sr. No.	Name of the Post	No. of Posts	7th CPC Pay Level
1.	Court Master	(Two)	Level-7 (44900-142400)
2.	Personal Assistant	(Four)	Level-5 (35400-112400)
3.	Judicial Assistant (Filing)	(One)	Level-8 (35400-112400)

The other contents in the above advertisement shall remain the same. Those who have already applied for above posts, are not needed to apply again.

(Madhulika Choudhary)
Ld. Registrar, APTEL
EN 36/116


CBC 3412 2120/00/72223

Continued from page 51

2. Candidates interested in applying for the posts, may visit the website of the National Health Authority for details and download the application form. The application, complete in all respects and accompanied by the essential documents, should reach the undersigned within 45 days from the date of publication of this advertisement.

(Sradha Paul)
Deputy Director (Admin.)
National Health Authority
EN 39/98

9. The Advertisement No.16/2022 is reproduced as under:



Kendriya Vidyalaya Sangathan (HQ)

18, Institutional Area, Saheed Jeet Singh Marg, New Delhi-110016

Website: www.kvsangathan.nic.in

HaryanaJobs.in

ADVERTISEMENT NO. 16/2022

HaryanaJobs.in

Direct Recruitment for the post of Primary Teacher in Kendriya Vidyalaya Sangathan

Kendriya Vidyalaya Sangathan (KVS), henceforth mentioned as KVS, is an Autonomous Organization under the Ministry of Education, Department of School Education & Literacy, Government of India. It has its Headquarters office at New Delhi, 25 Regional offices located at Agra, Ahmedabad, Bengaluru, Bhopal, Bhubaneswar, Chandigarh, Chennai, Dehradun, Delhi, Ernakulam, Gurgaon, Guwahati, Hyderabad, Jabalpur, Jaipur, Jammu, Kolkatta, Lucknow, Mumbai, Patna, Raipur, Ranchi, Silchar, Tinsukia, Varanasi and 1252 Kendriya Vidyalayas (KVs) functioning all over the country including 03 abroad. It also has five Zonal Institutes of Education & Training (ZIETs). KVs are co-educational schools upto class 12th and focuses on holistic development of students.

KVS invites applications from Indian Citizens for filling up the post of Primary Teacher in Kendriya Vidyalaya Sangathan to apply online through the KVS website www.kvsangathan.nic.in. No other means/mode of submission of applications will be accepted.

The recruitment examination will be conducted through Computer Based Test (CBT). If selected, the candidates may be posted anywhere in India on initial posting as per the requirement of the organization.

IMPORTANT :

B.Ed Candidates can apply and go through the selection process but their inclusion in the panel based on merit will be subject to the outcome of the SLP in the Hon'ble Supreme Court.

Category wise break up of vacancies is as under:-

PRIMARY TEACHER

UR	OBC	SC	ST	EWS	Total	OH	VH
2599	1731	962	481	641	6414	97	96

The schedule of ONLINE submission of application is given below :-

Commencement of Online submission on KVS website www.kvsangathan.nic.in	05.12.2022
Last Date for Online submission	26.12.2022 (23.59 Hrs)

Note :-

1. The number of vacancies advertised is tentative and may vary. They may decrease or increase.
2. Reservation for SC/ST/OBC/PH/EWS category will be as per Govt. of India Rules.
3. Age relaxation to SC/ST/OBC/PH & Ex-Servicemen category will be given as per Govt of India Rules.
4. For detailed information regarding eligibility criteria, age relaxation, fee, pay scales, examination centers, important instructions, scheme and syllabus of examination, mode of selection etc. candidates can visit KVS website www.kvsangathan.nic.in at home page i.e. Announcement and under Employment Notice sub-head vacancy position.
5. Once the candidate appear in written examination, fees paid by the applicant will not be refunded.

EN 36/118

JOINT COMMISSIONER (ADMN.)

10. The statutory provisions governing the field – as contained under Section 2(f), 17, 34 of the RPwD Act, read as under:

“2.(f) “communication” includes means and formats of communication, languages, display of text, Braille, tactile communication, signs, large print, accessible

multimedia, written, audio, video, visual displays, sign language, plainlanguage, human-reader, augmentative and alternative modes and accessible information and communication technology;

x x x x x x x x x

17. Specific measures to promote and facilitate inclusive education.—*The appropriate Government and the local authorities shall take the following measures for the purpose of section 16, namely:—*

(a) to conduct survey of school going children in every five years for identifying children with disabilities, ascertaining their special needs and the extent to which these are being met:

Provided that the first survey shall be conducted within a period of two years from the date of commencement of this Act; (b) to establish adequate number of teacher training institutions;

(c) to train and employ teachers, including teachers with disability who are qualified in sign language and Braille and also teachers who are trained in teaching children with intellectual disability;

(d) to train professionals and staff to support inclusive education at all levels of school education;

(e) to establish adequate number of resource centres to support educational institutions at all levels of school education;

(f) to promote the use of appropriate augmentative and alternative modes including means and formats of communication, Braille and sign language to supplement the use of one's own speech to 12 fulfil the daily communication needs of persons with speech, communication or language disabilities and enables them to participate and contribute to their community and society;

(g) to provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of eighteen years;

(h) to provide scholarships in appropriate cases to students with benchmark disability;

- (i) to make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses;
- (j) to promote research to improve learning; and (k) any other measures, as may be required.

x x x x x x x x x

34. Reservation.—(1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent for persons with benchmark disabilities under clauses (d) and (e), namely:—

- (a) blindness and low vision;
- (b) deaf and hard of hearing;
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it

may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.”

11. The aforesaid statutory provisions mandatorily provide 4% reservation for PwDs, out of which 1% must be exclusively reserved for Deaf and Hard of Hearing Persons. The mandate is clear and sacrosanct.

12. The Association's grievance is that the respondent/ KVS has not provided 1% reservation for Deaf and Hard of Hearing Persons in respect of posts advertised vide Advertisements No.15/2022 & 16/2022; and therefore, the said advertisements be set aside and the entire selection – to the extent vacancies have been filled up, which were meant to be filled up by deaf and Hard of Hearing Persons, should be re-advertised.

13. Reply has been filed in the matter by the respondent KVS. The KVS – on affidavit, has stated that they have calculated the vacancies and reservation as per notification dated 29.07.2013 circulated by the Ministry of Social Justice and Empowerment, Government of India to settle pending court cases/ grievances pertaining to reservation and all the vacancies have been notified keeping in view the notification dated 29.07.2013, which is the operative notification for identification of posts suitable for PwDs.

14. It has also been stated – on affidavit, that a Committee was constituted by the KVS in terms of notification dated 29.07.2013, and based upon the recommendations of the Committee, reservation has not

been provided to the disabled category (deaf and hard of hearing) in respect of certain posts. In nutshell, the stand of KVS is that they have provided reservation keeping in view the notification dated 29.07.2013 which identified the posts. The KVS has stated – on affidavit, that the Committee constituted by KVS has provided reservation to persons who are having benchmark disabilities as referred under Office Memorandum dated 15.01.2018 and an exemption has been sought keeping in view the Office Memorandum dated 15.01.2018.

15. It is pertinent to note that no such exemption has been brought on record for excluding the posts of Principal, Vice-Principal, PGT, TGT English, Hindi, Sanskrit Social Studies, Maths, Science subjects as well as Primary Teachers and teachers, etc.

16. The KVS – by constituting its own Committee, has excluded deaf and hard of hearing persons from reservation, and in fact, excluded the blind persons also in respect of the certain posts, including the post of Principal.

17. Learned Amicus Curiae has argued before this Court that the KVS has issued Advertisement No.16/2022 inviting applications for the post of Primary Teacher in KVS. Out of total 6414 posts advertised, reservation of 97 posts was made for the applicants who were Orthopedically Handicapped (OH) and 96 posts were reserved for the applicants who were Visually Handicap (VH). In the said advertisement, there was no post reserved for the persons who had Hearing Handicap (HH).

18. Mr. Dayan Krishnan has further argued that vide Advertisement No.15/2022, the KVS has invited applications for filling up the posts of Assistant Commissioner, Principal, Vice-Principal, Post Graduate Teacher (PGT), Trained Graduate Teacher (TGT), Librarian, Primary Teacher (Music), Finance Officer, Assistant Engineer (Civil), Assistant Section

Officer, Hindi Translator, Senior Secretariat Assistant, Junior Secretariat Assistant, Stenographer Grade-II in KVS. The said Advertisement No.15/2022 has not provided any reservation for the Hearing Handicap (HH) category in respect of posts of Post Graduate Teacher (PGT), Assistant Engineer (Civil), Hindi Translator and Stenographer Grade-II.

19. Mr. Krishnan has also brought to the notice of this Court that for the post of Trained Graduate Teacher (TGT), only 6 posts have been reserved for Hearing Handicap (HH) category against the total vacancy of 3176 posts.
20. Learned Amicus Curiae has submitted that Section 34(1) of the RPwD Act contemplates that in all government establishments, not less than 4% of the total number of vacancies in the cadre strength in each group of posts shall be reserved. Out of this 4%, persons who are deaf and hard of hearing are entitled to reservation of 1%.
21. Mr. Krishnan has further submitted that Section 33 of the RPwD Act requires that the Appropriate Government shall identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of vacancies reserved in accordance with the provision of Section 34 of the RPwD Act.
22. Learned Amicus Curiae has further stated that in the counter-affidavit dated 10.04.2023, the KVS has placed reliance upon notification dated 29.07.2013 issued by the Ministry of Social Justice and Empowerment, Government of India, in order to justify Advertisements No.15/2022 & 16/2022. His contention is that the reservation of vacancies by KVS on the basis of identification done in terms of notification dated 29.07.2013 issued by Ministry of Social Justice and Empowerment, Government of India, is erroneous and misplaced and the Government of India has, in fact, issued a subsequent notification dated 04.01.2021 under Section 33 of the RPWD Act.
23. The notification dated 04.01.2021 is reproduced as under:
- “MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT
[Department of Empowerment of Persons with Disabilities*

(Divyangjan)]

NOTIFICATION

New Delhi, the 4th January, 2021

No. 38-16/2020-DD-III.—Whereas Section 33 of the repealed *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* (hereinafter, after referred as repealed Act) provided for reservation of not less than 3% for persons with disabilities in the three categories namely, (i) locomotor disability including cerebral palsy, (ii) visual impairment (low vision & blindness) and (iii) hearing impairment.

2. And whereas, section 32 of the repealed Act mandated the appropriate Government to identify posts to be reserved for persons with disabilities and review such list at periodic interval not exceeding three years.
3. And whereas, in pursuance of the above provisions of the repealed Act, the Central Government last notified the list of posts suitable for persons with disabilities through notification No. 16-15/2010-DD-III dated 29th July, 2013.
4. And whereas, the Ministry of Social Justice and Empowerment, Government of India, in pursuance of the provisions of sections 32 and 33 of the repealed Act (since repealed on 15.06.2017) had constituted an Expert Committee on the 19th November, 2015 under the chairpersonship of the Secretary, Department of Empowerment of Persons with Disabilities to review the list of Central Government posts identified suitable for Persons with Disabilities. Copy of the said order is at Annexure-A.
5. And whereas, the Expert Committee met on the 9th December, 2015 and decided that one Sub-Committee should be constituted for each of the category of disabilities which are provided reservation under section 33 of the said repealed Act and accordingly, following three Sub-Committees were constituted, namely:—
 - i. Sub-Committee for locomotor disability
 - ii. Sub-Committee for hearing impaired
 - iii. Sub-Committee for visually impaired
6. And whereas, the Central Government notified the *Rights of Persons with Disabilities Act, 2016* (hereinafter referred as “the Act”) which inter-alia under sub-section (1) of section 34 extended the benefit of reservation to persons with benchmark disabilities in the new category of (i) autism, specific learning disability, mental illness and intellectual disabilities and (ii) multiple disabilities amongst the various categories mentioned in the said section of the Act.
7. And whereas, Section 33 of the said Act mandates the appropriate Government to constitute expert committee for identification of posts suitable for persons with benchmark disabilities and accordingly, following

two sub-committees were further constituted to take care of identification of posts suitable for new categories included under the Act, namely; (i) Sub-Committee for autism, intellectual disabilities, specific learning disability and mental illness, and (ii) Sub-Committee for multiple disabilities.

- 8. And whereas, all the Sub-Committees reviewed the posts notified through notification No.16-15/2010-DD-III dated the 29th July 2013, and submitted their reports and the Expert Committee considered the reports of the Sub-Committees in its meeting held on 19th November 2019, finalized its recommendations and submitted its report to the Central Government for consideration.*
- 9. Now, therefore, in exercise of powers conferred upon section 33 of the said Act and based on the recommendations of the Expert Committee, the Central Government hereby notifies the gist of the report, which is at Annexure-B and the list of Central Government posts in Group A, B, C and D identified suitable for persons with benchmark disabilities which is at Annexure-C for information and further necessary action by all cadre controlling authorities in the Central Government.*
- 10. The said list supersedes the list of posts for Groups „A“, „B“, „C“ and „D“ notified through notification No. 16-15/2010DD-III dated 29th July, 2013.*

Note 1: Persons with benchmark disabilities require aids and assistive devices to overcome their difficulties. The aids and assistive devices may be provided to persons with benchmark disabilities on their appointment keeping in view their requirement as per the instructions of DoPT issued from time to time.

Note 2: The list of posts being notified is only indicative and not an exhaustive list. If a post is not mentioned in the list, it is not to be construed that it has been exempted. Central Ministries, Departments, Autonomous Bodies, Public Sector Undertakings may further supplement the list by adding to the list of posts identified for respective category of disability.

- Note 3: If a post is already held by a person with benchmark disability, it shall be deemed to have been identified for that category of benchmark disability.*
- Note 4: If a post is identified in the feeder grade, all the posts in the promotional grade should also stand identified.*
- Note 5: If a post having identical nature and place of job with respect to any identified post, the post should be construed to be identified even if the post has a different nomenclature and/or is placed in a different group.*
- Note 6: This list will be the principal list in respect of the posts identified suitable for persons with benchmark disabilities. However, in case a list of post is separately identified by any Central Government establishment, the list having wider range of identified categories (i.e. having more sub-categories under each category) would prevail.*
- Note 7: In case a post is identified suitable for more than one sub-category under a broad category, individual Central Ministries or Departments or Public Sector Undertakings or Autonomous Bodies should conduct recruitment for all the subcategories and cannot suo-moto choose one particular sub-category for appointment.*
- Note 8: It is for the Central Ministries or Departments or Public Sector Undertakings or Autonomous Bodies to verify the authenticity of the certificate of disability and examine suitability of the candidate in terms of functional*

*requirements before appointment
against any identified post.*

*Note In the event of discrepancies in the
9: English and*

*Hindi versions of this Notification, English version shall prevail over the
Hindi version.*

Dr. PRABODH SETH, Jt. Secy.”

24. Mr. Kirtiman Singh, learned CGSC has brought to the notice of this Court that the notification dated 29.07.2013 was not in operation at the time when the advertisement was issued, and in fact, notification dated 04.01.2021 was in operation, and therefore, the entire exercise conducted by the KVS is contrary to the notification dated 04.01.2021.

25. It has also been argued by Mr. Dayan Krishnan, learned Amicus Curiae as well as by Mr. Kirtiman Singh, learned CGSC that the KVS by constituting its own Committee cannot exclude the posts which are identified posts as per notification dated 04.01.2021.

26. This Court has heard learned Amicus Curiae at length as well as learned counsel for the parties, including Ms. Sarah Sunny, who is a Deaf Lawyer.

27. Admittedly, the KVS has not provided reservation to the persons having benchmark disability under the Hard of Hearing category, keeping in view the notification dated 29.07.2013. Notably, the notification dated 29.07.2013 was no longer in operation at the time when the advertisement was issued. In fact, the Ministry of Social Justice & Empowerment, Government of India, in pursuance of Section 32 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 had constituted an Expert Committee, and based

upon the recommendations of the said Expert Committee, large number of posts were identified as suitable for Persons with Disabilities in Group-A, Group-B and Group-C, vide notification dated 04.01.2021.

28. Note 1 of the notification dated 04.01.2021 provides that if persons with disabilities require some aids and appliances to overcome their disabilities, the same will be provided by the employer on their appointment keeping in view their requirement. The mandate specified in Note 1 is directly sourced from the provision for “reasonable accommodation” in the RPwD Act, 2016.

29. Note 2 of the aforesaid notification makes it very clear that the list of the posts being notified is not an exhaustive list and the Ministries, Departments, Public Sector Undertakings and Autonomous Bodies may further supplement the list. Meaning thereby, if a particular Department/ Public Sector Undertaking/ Autonomous Body wants to add some other post to the said list, they can certainly do it. However, the posts which have been identified by the Ministry of Social Justice & Empowerment by virtue of Section 32, cannot be deleted – as has been done in the present case by the KVS. The KVS has stated – on affidavit, that they have constituted some internal Committee and no reservation has been made for deaf and hard of hearing persons (1%).

30. In the considered opinion of this Court, the KVS has violated the statutory provisions as contained under the RPwD Act. The advertisements in question – on this count alone, deserve to be quashed. The KVS has assumed a power which never vested in it. The task of identification as well as of exemption of posts falls in the domain of the appropriate government. However, when the matter was being argued, it was brought to the notice of this Court by learned counsel for the KVS that the process of recruitment was already over, and at this juncture, by

quashing the advertisements, the Court shall be discontinuing the services of the persons who have been duly selected on various posts in terms of the advertisements.

31. In the considered opinion of this Court, if the process of recruitment is already over, the KVS – in respect of the identified posts, shall provide 1% reservation against the total vacancies notified vide the impugned advertisements to deaf and hard of hearing persons, and shall initiate a drive of special recruitment for filling up the vacancies reserved for various categories of disabled persons, including 1% identified persons who are deaf and hard of hearing. To reiterate, the reservation must be calculated on the total number of vacancies and ultimate appointment shall take place on the posts identified in the 2021 notification. The exercise of issuing a fresh advertisement for disabled category of total 4% of posts in the entire organization be concluded within a period of three months from the date of receipt of certified copy of this order.

32. It is unfortunate that disabled persons are being compelled to file writ petitions and are being compelled to run from pillar to post by an organization like KVS. They are not claiming any charity, and they are claiming their rights as guaranteed to them under the RPwD Act. The legislature has laid down a noble vision of providing “reasonable accommodation” to persons with disabilities so as to ensure that all possible special measures are adopted to enable the PwDs to perform to the best of their ability. Despite so, instead of creating such reasonable accommodation, the respondent has looked down upon the PwDs from the lens of inconvenience.

33. In a recent judgment in the case of ***National Federation of the Blind Vs. Kendriya Vidyalaya Sangthan & Ors.***, 2023:DHC:7551-DB, which was in respect of persons with disabilities (blind or low vision), this

Court – relying upon the same notification dated 04.01.2021, has directed the KVS to provide 1% reservation to the blind and low vision persons in respect of the total identified posts in the organization keeping in view the notification dated 04.01.2021.

34. Similarly, in the present case also, the KVS – in respect of the identified posts as per the notification dated 04.01.2021, shall issue an advertisement and shall clear the backlog of vacancies within a period of six months from the date of receipt of certified copy of this judgment.

35. The posts of Principal and the Vice-Principal find place in the notification dated 04.01.2021 issued by the Government of India. The posts of Post Graduate Teacher (PGT), TGT (Trained Graduate Teacher), Assistant Engineer (Civil), Hindi Translator and Stenographer Grade-II also find place in the notification dated 04.01.2021, and therefore, the KVS is directed to appoint deaf and hard of hearing persons by providing them 1% reservation against the total number of vacancies in the organization. Not only this, the KVS shall provide 4% reservation to the disabled persons in respect of total vacancies in the organization – which is the mandate of law. The exercise of appointing disabled persons, including deaf and hard of hearing persons be concluded within a period of six months from the date of receipt of certified copy of this judgment.

36. Before parting, we feel constrained to observe that there appears to be a mismatch in the understanding of different departments regarding the mandate under RPwD Act. Whereas the Ministry of Social Justice and Empowerment (Nodal Ministry under the RPwD Act) has upgraded the list of posts suitable for the PwDs, the thought has not percolated to the departments which conduct recruitment. A similar “policy disconnect” was noted by the Hon’ble Supreme Court in **Vikash Kumar v. Union Public Service Commission and Others**, (2021) 5 SCC 370, wherein the stand

taken by the Nodal Ministry was found to be in contrast with the stand taken by the recruiting agency – UPSC. This policy disconnect had led to a situation wherein different departments are made to learn the same lesson after individual cases travel to the constitutional Courts. The direct impact of this practice is to compel the PwDs to assert their basic rights before judicial fora, something that cannot be termed as desirable. In this regard, we direct the concerned Secretary, Ministry of Social Justice and Empowerment to issue suitable guidelines for the implementation of reservation policy by all departments in a uniform manner. One step may go far in the fulfilment of our promise to the PwDs.

37. The petitions, including applications (if any), stand disposed of in the aforesaid terms. No order as to costs.

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