

65501

Speed-Post

Office of the Advocate General,  
Ernakulam, date: 01.08.2016

From

M.A. Asif,  
Senior Government Pleader  
Advocate General's Office, Ernakulam.

Secretary to Government,  
Social Welfare Department, Secretariat, Thiruvananthapuram.

Repeat to:

1. The Commissioner for Persons with Disabilities, Office of the Commissioner for Persons with Disabilities, Room No. 113, Secretariat, Thiruvananthapuram.
2. The Director of Public Instructions, Thiruvananthapuram.
3. The Director of Higher Secondary Education, Thiruvananthapuram.
4. The Director of Vocational Training Institutions, Thiruvananthapuram.
5. The Director of Collegiate Education, Thiruvananthapuram.

=====

R2-W.P.(c) No. 20070/2016

Date: 01.08.2016

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The above Writ Petition is filed by C.V. Balakrishnan, who is the father of one Vishnuprasad .C.V, who is a blind person by birth. Mr. Vishnuprasad is a Post Graduation in Malayalam with NET and JRM. The grievance of the petitioner is that in judgment dated 15.10.2015 in W.P.(C) No.3403/2015, the Honourable High Court had ordered the state to expedite the implementation of Section 33 of Persons with Disabilities Act in Devaswom Boards within a period of three months. Now the petitioner herein seeks a direction to extent the benefit in the above judgment to all Government Aided Educational institutions in the state, so that the disabled persons shall be entitled for reservation in such institutions also .

While considering the matter today, the court was pleased to direct the Secretary, Department of Social Welfare, Government of Kerala to get the copy of the Writ Petition circulated to all Government aided institutions through the Director of Public Instructions, Thiruvananthapuram, the Director of Higher Secondary Education, Thiruvananthapuram, the Director of Vocational Training Institutions, Thiruvananthapuram and the Director of Collegiate Education, Thiruvananthapuram. The copy of the Writ Petition is already sent to the Secretary Social Welfare Department for transmission to the above officers. The court has specifically directed to give notice of the Writ Petition to all aided institutions in the State, in accordance with the list of such institutions maintained by the departments concerned. The notice and copy of Writ Petition may be served to the aided institutions under proper acknowledgement and the acknowledgment may be retained for proof of service. The matter stands posted to the 3rd week of September, 2016 for reporting compliance of the service of notice as directed. Please treat this as most urgent and the order may be complied with in its letter and spirit.

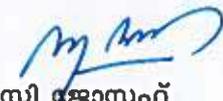
  
**M.A. ASIF**  
**SR. GOVERNMENT PLEADER**

“ഭരണഭാഷ - മാതൃഭാഷ”

പുറത്തെഴുത്ത് കത്ത് നം.എച്ച്2/65501/2016/ഡി.പി.ഐ.

പൊതുവിദ്യാഭ്യാസ ഡയറക്ടറുടെ കാര്യാലയം,  
തിരുവനന്തപുരം. തീയതി, 21.10.2016.

കത്തിന്റേയും റിട്ട് പെറ്റീഷന്റെയും (നമ്പർ 20070/16) പകർപ്പ് എല്ലാ എയ്ഡഡ് സ്കൂൾ മാനേജർമാർക്കും ജില്ലാ/ഉപജില്ലാ വിദ്യാഭ്യാസ ഓഫീസർമാർക്കും അയക്കുന്നു. ജില്ലാ/ഉപജില്ലാ വിദ്യാഭ്യാസ ഓഫീസർമാർ ഇവയുടെ പകർപ്പ് അവരുടെ അധീനതയിലുള്ള എല്ലാ എയ്ഡഡ് സ്കൂളുകളിലെയും മാനേജർമാരുടെ അറിവിലേക്കായി നൽകേണ്ടതും, കൈപ്പറ്റ് രസീത് സൂക്ഷിക്കേണ്ടതുമാണ്. സിറോക്സ് പകർപ്പാണ് നൽകുന്നതെങ്കിൽ അതിനാവശ്യമായ ചെലവ് O.E-യിൽ നിന്ന് വഹിക്കാവുന്നതാണ്.

  
**ജെസ്സി ജോസഫ്**  
 പൊതു വിദ്യാഭ്യാസ അഡീഷണൽ ഡയറക്ടർ (ജനറൽ)  
 പൊതുവിദ്യാഭ്യാസ ഡയറക്ടർക്കു വേണ്ടി

1. എല്ലാ ജില്ലാ വിദ്യാഭ്യാസ ഓഫീസർമാർക്കും.
2. എല്ലാ ഉപജില്ലാ വിദ്യാഭ്യാസ ഓഫീസർമാർക്കും.
3. എല്ലാ എയ്ഡഡ് സ്കൂൾ മാനേജർമാർക്കും.  
(ജില്ലാ/ഉപജില്ലാ വിദ്യാഭ്യാസ ഓഫീസർമാർ മുഖാന്തരം)
4. എല്ലാ വിദ്യാഭ്യാസ ഉപ ഡയറക്ടർമാർക്കും.
5. സൂക്ഷിപ്പ് ഫയൽ.

## BEFORE THE HON'BLE HIGH COURT OF KERALA

AT ERNAKULAM

W.P.(C). No. OF 2016

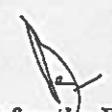
Petitioner : C.V Balakrishnan

Vs....

Respondents : State of Kerala &amp; another

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Dated this the 7<sup>th</sup> day of June, 2016.

  
Counsel for the Petitioner



in the State. Hence it is just and necessary that necessary government orders be passed for the proper implementation of the above referred G.O. in the said institutions also.

Requesting for immediate action the petitioner preferred Ext.P3 representation. The Writ Petition is filed seeking early disposal of the said representation.

Dated this the 7<sup>th</sup> day of June, 2016.



**COUNSEL FOR THE PETITIONER**

BEFORE THE HONOURABLE HIGH COURT OF KERALA  
AT ERNAKULAM

W.P.(C).No. OF 2016  
(Special Original Jurisdiction)

**Petitioner:**

C.V Balakrishnan  
Vyshnavam, Aroor P.O,  
Cherthala, PIN - 688538.

Vs.....

**Respondents:**

1. State of Kerala, represented by its Secretary,  
Social welfare Department, Secretariat,  
Trivandrum – 695 001.
2. The Commissioner for Persons with Disabilities,  
Office of the Commissioner for Persons with Disabilities,  
Room No.113, Secretariat, Trivandrum – 695 001.

**WRIT PETITION FILED UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA**

Address for service of notice and process to the petitioners is that of  
their Counsel E.Narayanan, Advocate, High Court Road, Kochi –  
682 031.

Address for service of notice and process to the Respondents are as  
shown above.



STATEMENT OF FACTS

1. The petitioner's son Vishnuprasad C.V, aged 25 years, is a blind by birth. He is a holder of M.A(Malayalam) Degree. He has UGC with NET & JRM.
2. While so, the petitioner came to know about G.O.(P)NO.61/2012/SWD, dated 17-10-2012, whereby the government has passed an order that 3% reservation for physically handicapped persons for getting employment as per their respective qualifications.
3. The manner in which appointments should be given to the above said 3% reserved for the physically handicapped persons are detailed in Annex.A and Annex.B of the above said Government Order. On enquiry it is revealed that the said G.O. is applicable only to vacancies arising in Government institutions. The said G.O. is not yet made applicable to the different educational institutions under the Devaswom Board and under the aided institutions. A true copy of the G.O.(P)No.61/2012/SWD, dated 17-10-2012 is produced herewith and marked as Exhibit P1.
4. Since the said G.O. has not been made applicable to different educational institutions coming under the Devaswom Boards and in various aided institutions, the opportunity for getting a job to the son of the petitioner, who is 100% blind is very less. Hence the petitioner is preferring the above case as a Public Interest Litigation.
5. While so, this Hon'ble Court as per decision reported in 2015(4) KLT 523 held that the benefit of Ext.P1 G.O. is made applicable to the institutions coming under the Cochin Devaswom Board. While passing the said Judgment, this Hon'ble Court was pleased to



observe that the Cochin Devaswom Board cannot at all be said that it is not an "establishment" and is a body corporate controlled by the Government and hence it is an establishment coming under the purview of "The Persons with disabilities (Equal Opportunities, protection of Rights and Full Participation) Act, 1995". A true copy of the Judgment of this Hon'ble Court reported in 2015(4) KLT 523 is produced herewith and marked as Exhibit P2.

6. It is respectfully submitted that there are a number of Government aided private educational institutions in Kerala. Since they are enjoying various aids from the Government of Kerala, they would come under the purview of "establishment" as defined U/s.2(k) of the Persons with disabilities (Equal Opportunities, protection of Rights and Full Participation) Act, 1995. Ext.P1 G.O. is passed by the Government of Kerala in accordance with Section 33 of the Persons with disabilities (Equal Opportunities, protection of Rights and Full Participation) Act, 1995. As per the said GO, the Government has published comprehensive lists of different categories of posts, which are identified for the different divisions among the disabled persons for appointment in public service. As per Ext.P2, Judgment of this Hon'ble Court, this Hon'ble Court was pleased to observe that the Cochin Devaswom Board cannot at all be said that it is not an establishment and is a body corporate controlled by the Government of Kerala. The above said observation of this Hon'ble Court made in the above referred decision is equally applicable to all the aided colleges and schools in the State. Hence it is just and necessary that necessary government orders be passed for



the proper implementation of the above referred G.O. in the said institutions also.

7. Under such circumstances, the petitioner preferred a representation dated 12-1-2016 before the 1<sup>st</sup> respondent. A true copy of the representation submitted by the petitioner is produced herewith and marked as Exhibit P3. It is respectfully submitted that the 1<sup>st</sup> respondent received the said representation on 22-1-2016. A true copy of the acknowledgement card evidencing receipt of Ext.P3 by the 1<sup>st</sup> respondent is produced herewith and marked as Exhibit P4. The 2<sup>nd</sup> respondent also received the representation on 23-1-2016, of which a true copy of acknowledgement card evidencing receipt is produced herewith and marked as Exhibit P5.
8. Though the respondents have received the said representation, they have not yet taken any decision on the same till date. Due to the inaction on the part of the respondents, the petitioner will be put to irreparable loss and hardship.

Under the above circumstances, the petitioner has no other alternative remedy of an efficacious nature other than to approach this Hon'ble Court under Article 226 of the Constitution of India to redress his grievance. Hence this Writ Petition is filed on the following among other:-

#### G R O U N D S

1. There is hardly any information or research on employment of disabled people available in the country. None of the strategy papers/working committees reports on employment address disability employment. Employment is also correlated with many other factors – education, awareness, access, etc



2. Enhancing employment opportunities for people with disabilities is one of the main concerns of the disability sector in India.
3. When one looks at the micro level, it may seem like there has been progress. There is increased awareness amongst Corporates and people with disabilities. There has been pressure on the Government to implement The Disability Act, 1995. Even though there was no law mandating the private sector to employ disabled people, some companies have taken proactive measures to employ disabled people.
4. There is a wide gap between the employment rate of people with and without disabilities in the country. Therefore, the target for bringing down the unemployment rate cannot be achieved without addressing the employment issues of people with disabilities, who constitute about 5-6% of the population. It would require proactive initiative on the part of all concerned to ensure that disability is included in the employment programmes of the Government and the private sector.
5. A report was prepared by the World Bank, 'People with Disabilities in India: From Commitments to Outcomes' on the request of Government of India in the year 2006-2007. Their observations are quite insightful. Some of the major points related to Government employment given in the Report are:
  - Only 27% of people with disabilities registered with special exchanges, or the special cells of regular exchanges. Among the total 661,000 people with disabilities on the live register of all exchanges, 109,929 were registered as part of special exchanges for physically handicapped and 66,612 were registered as part of special cells for physically handicapped of regular exchanges.
  - Total funding for special exchanges and cells between 1998 and 2003 was just over Rs. 5 crores. Employment exchanges – both



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special and regular – play a negligible role in promoting employment among disabled people. The cost effectiveness of many special exchanges is open to question. Even at an average level, the approximate per unit cost of a placement by the special exchanges in 1998-2003 appears to be over Rs. 7,500/-.

- It is clear that the placement ratio is very low for special exchanges and other exchanges, 0.9 % and 0.7% respectively in 2003. The placement ratio has roughly halved over the past decade in both cases, from close to 2% and 1.2% in 1994 for special and other exchanges respectively.

.Only 10.2 % of all posts in Ministries/Departments and Public Sector had been identified as suitable for disabled people

6. The Disability Act 1995 provides for a 3% reservation in “identified posts” for people with disabilities in all categories of jobs. The posts were meant to have been identified soon after the Act coming into force and updated every 3 years. The initial identification of posts at the Central Government level was not completed until 2001 and no formal expansion of identified posts has been completed subsequently. As per data available in 2003, only 10.2% of all posts in Ministries/Departments and public establishments had been identified as suitable for people with disabilities. Among that 10% of posts, 3.5% for Ministries and Departments and 4.5% for public establishments had been filled by employees with disability. While the 3% quota has been met in the strict terms of the Act, the share of disabled people in all posts remains negligible, at 0.44%. (Source: World Bank Report). The Government has been viewing 3% reservation in a very restricted manner. A Public Interest Litigation (PIL) was filed in Delhi High Court by a visually impaired lawyer, S K Rungta in 2006, against the Government’s poor record in implementing The Disability Act, 1995. Delhi High Court ruled that 3% of the “total strength” of employees in any Government establishment should be disabled persons. (Source: December 22,



2008 indianexpress.com) This is a landmark judgment, as it provides clear clarification to Section 33 of The Disability Act that reservation is against total jobs and not just identified jobs.

7. The general feeling in the disability sector has been that the system of 'identification of jobs' is very restrictive. Due to this, many disabled people have been denied job opportunities in spite of having necessary qualification and skills. An example has been given in the World Bank Report to highlight the flaws of the Government's job list, "In Group A, the job of an agricultural scientist specialised in econometric analysis is identified as being suitable for an individual who is blind or has an orthopaedic disability, but not for someone with a hearing disability". Advocacy Campaign to open up High Ranking Civil Services for Disabled People The issue of discrimination in Civil Services was taken up by the National Centre for Promotion of Employment for Disabled People (NCPEDP) in a major way in 2003, when two qualified disabled persons were relegated to lower ranking jobs because of their disability and one was not offered any job, as no civil services job was identified for people with visual disabilities. NCPEDP's research revealed, out of the 26 Civil Services, only five Services were identified as suitable to people with locomotor disability, two for people with hearing disability and none at all for people with visual disability. There was discrepancy between the Union Public Service Commission (UPSC), the body that conducts the Civil Services exam, and the Department of Personnel & Training (DoPT) that allots services. UPSC had been providing Braille question papers, scribes and extra time for visually impaired candidates for over a decade. Then when they qualify, DoPT tells them, "No service has been earmarked for visually impaired candidates." Now, the Indian Administrative Service and a few more services have been identified for disabled people including those with visual disability. There have many similar cases. It took court's intervention to get Bank Officer's position opened up for people with visual and hearing impairment. There are still many cases of discrimination which are pending in the Indian Courts.



There are also many instances of employees with disability not getting promoted because the next level of job has not been 'identified'. The World Bank Report clearly recommends "dropping of the whole idea and doing away with such a practice". It says, "The list of identified jobs is based on the assumption that the characteristics of an impairment are the exclusive determinants of an individual's ability to hold a position at a particular skill level and thus ignores the potential influences of individual characteristics (motivation, age at disability onset), access to employment services, and the characteristics of the workplace and labourmarket." Another issue with the Job List is that the jobs have been identified for only three disability categories, because the 3% reservation applies only to three disability types – locomotor, visual and hearing, with a 1 percent reservation for each. Thus even the disability categories of the Act are not all included in the reservation policy, let alone a range of other disabilities.

8. UN Convention on the Rights of Persons with Disabilities (UNCRPD), which has been ratified by India clearly mandates 'prohibit discrimination in workplace' and 'ensure reasonable accommodation'. Therefore, it is important to not only review the arbitrary system of "identification of jobs" but also to develop a system that is non-discriminatory
9. The Delhi High Court has also ruled, "the Centre to conduct a "special recruitment drive" to fill the backlog in posts reserved for this category by December 2010". (Source: December 22, 2008 indianexpress.com).
10. Private sector is growing in our country. In the Eleventh Plan it has been stated that, "Total employment in public sector establishments has increased by 12.2% in the period 1999–2000 to 2004–05. Total employment in private sector establishments hiring less than 10 workers has increased by 18.6% in the same period. Total



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employment in private sector establishments hiring more than 10 workers has increased by as much as 45.8%! If we limit our focus on regular employees in the larger private sector units, this category shows growth of 39.42%. However, the growth of casual employees in the larger private sector units was even faster at 58.9%." (Source: XI Five Year Plan, Chapter 4, Employment Perspective and Labour Policy).

11. In view of the judgment rendered by this Honourable Court, the Government is not justified in not taking any action on the representation submitted by the petitioner.

For these and other grounds urged at the time of hearing it is most humbly prayed that this Hon'ble Court may kindly be pleased to call for the records leading upto Ext.P5 and grant the following:-

**RELIEFS**

1. To declare that the Exhibit P2 Judgment of this Honourable Court is applicable to the various Government aided private educational institutions in Kerala,
2. Issue a writ of Mandamus or other appropriate writ, order or direction directing the 1<sup>st</sup> respondent to dispose of Ext.P3 representation in the light of Ext.P2 judgment within a time limit prescribed by this Hon'ble Court by affording an opportunity of hearing to the petitioner;
3. To direct the respondent to give cost of this litigation to the petitioner and



4. Granting such other reliefs which this Honourable Court may feel deem fit to grant.

Dated this the 7<sup>th</sup> day of June, 2016.



COUNSEL FOR THE PETITIONER

*Bhatnagar*  
PETITIONER

- INTERIM PRAYER SOUGHT FOR

For the reasons stated in the Writ Petition and in the accompanying affidavit it is most humbly prayed that this Hon'ble Court may be pleased to direct the 1<sup>st</sup> respondent to dispose of Ext.P3 representation in the light of Ext.P2 within a time limit prescribed by this Hon'ble Court after affording an opportunity of hearing to the petitioner

Dated this the 7<sup>th</sup> day of June, 2016.



COUNSEL FOR THE PETITIONER

## BEFORE THE HON'BLE HIGH COURT OF KERALA

## AT ERNAKULAM

W.P.(C). No. OF 2016

Petitioner : C.V Balakrishnan

Vs....

Respondents : State of Kerala &amp; another

AFFIDAVIT

I, C.V.Balakrishnan, aged 58, S/o. <sup>Vasudevan Elayath.C.N.</sup>, residing at "Vaishnavan".  
Aroor, Cherthala, do hereby solemnly affirm and state as follows:-

1. I am the petitioner in the above Writ Petition. I am conversant with the facts sworn to in this affidavit.
2. The facts stated in the Writ Petition are true to the best of my information, knowledge and belief. The Exhibits produced are true copies of their originals.
3. All the averments contained in the writ petition are true to the best of my knowledge, information and belief and the petitioner is entitled to the reliefs prayed for in the writ petition.

The petitioner has not filed earlier Writ Petition for similar reliefs.

The facts stated above are true and correct.

Dated this the 7<sup>th</sup> day of June, 2016.

*Balakrishnan*  
Deponent

Solemnly affirmed and signed before me by the deponent on this the day of 7<sup>th</sup> June, 2016 at my office at Ernakulam.

*[Signature]*  
Advocate

*E. Narayana*



GOVERNMENT OF KERALA

Abstract

Social Welfare Department-Declaration of more posts in Class I, II and III as suitable for appointment of physically disabled person-Eligibility criteria modified-Orders issued.

SOCIAL WELFARE(D)DEPARTMENT

G.O(P)No. 61/2012/SWD. Dated, Thiruvananthapuram 17.10.2012

- Read:-
1. G.O(P)No.119/2005/SWD dated 6.8.2005.
  2. G.O(P)No.43/2009/SWD dated 13.10.2009.
  3. G.O(Ms)No.37/2011/SWD dated 2.8.2011.
  4. Minutes of the Expert Committee Meeting held on 7.9.2012.

ORDER.

As per Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or Class of persons with disability of which one per cent each shall be reserved for persons suffering from (i) blindness or low vision, (ii) hearing impairment, (iii) locomotor disability or cerebral palsy in the posts identified for each disability.

As per G.O read as 1<sup>st</sup> paper above the Government have already identified 20 posts in Class I and Class II categories as suitable for appointment of Physically Handicapped Persons in various Government Departments. As per G.O read as 2<sup>nd</sup> paper above the Government have already identified 48 posts in Class I and Class II and 4 posts in Class III categories as suitable for appointment of physically disabled persons in Government Department.

The Expert Committee submitted their recommendation by identifying more posts under Class I and Class II as suitable for physically disabled persons in different Government Departments. The Expert Committee has been recommended in Class I and II categories listed in G.O(P)No.119/05/SWD dated 6.8.2005 and G.O(P)No.43/2009/SWD dated 13.10.2009 more posts identified in physically disabled and categories viz, hearing impairment, Blindness or low vision, and Locomotor disability/Cerebral Palsy. Accordingly revised list of posts has been prepared on the basis of the recommendation/suggestion of the Expert Committee, Expert Doctors and Heads of Departments. It is since learnt that G.O dated 13.10.2009 has been issued after considering such report of expert committee and based on the recommendation for identifying categories of posts suitable for appointment physically disabled candidates. The question raised by Special Government Pleader to Advocate General, Hon.High Court, Ernakulam in OP(KAT)No.2045/12 filed by Smt.Jaya.S.Anand that whether Government is entitled to specify the categories of posts into different categories applicable to persons with orthopaedic lower extremities and orthopaedic upper extremities, where the Persons with Disabilities Central Act, 1995 only stipulated that person with locomotor disability is entitled for reservation based on the observation of Hon'ble High Court, Ernakulam during the hearing of above OP.

In view of the above circumstances, Government have examined the matter in detail and are pleased to order that the categories of posts identified by the Expert Committee constituted by Government as modified in accordance with the provisions of Section 2(o) contained in Chapter I of Persons with Disabilities Act, 1995 and provisions of section 33 in Chapter VI. Accordingly a comprehensive list of different categories of posts which are identified for the different divisions among the disabled for appointment in public service including the categories listed in the Government order are included in the Annexure.A.

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P/1(2)

Also the categories of posts of Higher Secondary Teacher(Jr) in Higher Secondary Education Department and Vocational Teacher, Vocational Instructor, Non-vocational Teacher(Jr) and (Sr) in Vocational Higher Secondary Education Department(Class III posts) are also identified for Physically Handicapped Persons as shown in the Annexure B against Class III posts.

The Kerala Public Service Commission will advise physically disabled candidates from the Rank Lists for the said categories of posts prepared by the Commission against the 3% quota reserved for the Physically Disabled Candidates.

By order of the Governor,

K.M.ABRAHAM  
Principal Secretary to Govt.

To

- All Heads of Departments
- All District Collectors
- All Departments(all sections) of Secretariat including Law, Finance and Legislature(with C/L)
- The Secretary, Kerala Public Service Commission(with C/L)
- The Advocate General, Ernakulam, Thiruvananthapuram(with C/L)
- The Registrar, High Court, Ernakulam.
- The Director, Social Welfare Department, Thiruvananthapuram
- The State Commissioner for Persons with Disabilities, Thiruvananthapuram
- The Director of Information and Public Relations, Thiruvananthapuram(Information Officer, Web & New Media)
- The Private Secretary to the Chief Minister and other Ministers
- The PS to the Leader of Opposition.
- The Private Secretary to the Speaker/Deputy Speaker
- The Joint Secretary to Chief Secretary
- Stock File/Office copy

Forwarded/By order

*Abijah*

Section Officer.

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A(3)

## Annexure-A

List of categories of posts under Class I and Class II which are identified as suitable for appointment of Physically Disabled Candidates including the posts already identified in G.O(P)No.119/05/SWD dated 6.8.2005 & G.O(P)43/2009/SWD dated 13.10.2009.

Sl.No	Name of post	Name of Department	Category
1.	Analyst Grade-3	Drugs Control Department	Locomotor disability/Cerebral Palsy, Hearing impairment
2.	Assistant Engineer-Civil, Mechanical, Electrical	Harbour Engineering Department	Hearing impairment, Low vision, Locomotor disability/Cerebral Palsy
3.	Assistant Engineer	Archeological Department	Locomotor disability/Cerebral Palsy, Low vision, Hearing impairment
4.	Assistant Geologist	Mining Geology Department	Locomotor disability/Cerebral Palsy, Hearing impairment
5.	Assistant Drilling Engineer	Mining Geology Department	Hearing impairment, Low vision, Locomotor disability/Cerebral Palsy
6.	Assistant Town Planner	Town Planning Department	Locomotor disability/Cerebral Palsy, Hearing impairment, Low vision
7.	Assistant Director	Industries & Commerce Department	Locomotor disability/Cerebral Palsy, Low vision
8.	Additional Legal Advisor	Vigilance & Anti-Corruption Bureau	Locomotor disability/Cerebral Palsy, Blind
9.	Archivist	State Archeological Department	Locomotor disability/Cerebral Palsy, Hearing impairment, Low vision
10.	Assistant Engineer	Irrigation Department	Locomotor disability/Cerebral Palsy, Low vision, Hearing impairment
11.	Assistant Engineer	Public Works Department	Locomotor disability/Cerebral Palsy, Low vision, Hearing impairment

12.	Assistant Surgeon	Health Services Department	Locomotor disability/Cerebral Palsy, Hearing impairment
13.	Assistant Electrical Inspector	Electrical Inspectorate Department	Locomotor disability/Cerebral Palsy, Hearing impairment
14.	Agricultural Officer	Agriculture Department	Locomotor (disability/Cerebral Palsy, Low vision, Hearing impairment
15.	Assistant Registrar	Co-operative Department Fisheries Department	Locomotor disability/Cerebral Palsy, Hearing impairment, Low vision
16.	Block Development Officer	Rural Development Department	Locomotor disability/Cerebral Palsy
17.	Child Development Project Officer	Social Welfare Department	Locomotor disability/Cerebral Palsy
18.	Commercial Tax Officer	Commercial Tax Department	Locomotor disability/Cerebral Palsy
19.	Dairy Extension Officer	Dairy Development Department	Locomotor disability/Cerebral Palsy
20.	Drugs Inspector	Drugs Control Department	Locomotor disability/Cerebral Palsy, Hearing impairment
21.	Deputy Collector	Land Revenue Department	Locomotor disability/Cerebral Palsy, Low vision
22.	Higher Secondary School Teacher-Arts and Commerce Higher Secondary School Teacher-Science	Higher Secondary Education Department	Locomotor disability/Cerebral Palsy, Blindness, Low vision
23.	Insurance Medical Officer/Assistant Insurance Medical Officer	Department of Insurance Medical Service	Locomotor disability/Cerebral Palsy, Blindness, Low vision
24.	Junior Scientific Officer	Chemical Examination Laboratories	Locomotor disability/Cerebral Palsy, Hearing impairment
25.	Junior Chemist	Mining Geology Department	Locomotor disability/Cerebral Palsy, Hearing impairment

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26.	Junior Hydrologist and Geologist	Ground Water Department	Locomotor disability/Cerebral Palsy, Hearing impairment
27.	Lecturer	KIRTADS, Kozhikode	Locomotor disability/Cerebral Palsy, Blindness, Low vision
28.	Lecturer	Govt. Law Colleges	Locomotor disability/Cerebral Palsy, Blindness, Low vision
29.	Lecturer	Ayurveda Medical Education Department	Locomotor disability/Cerebral Palsy, Hearing impairment, Low vision
30.	Lecturer in Sanskrit	Ayurveda Medical Education Department	Locomotor disability/Cerebral Palsy, Blindness
31.	Lecturer Pathology, Biochemistry, Pharmacology, Physiology	Medical Education Department	Locomotor disability/Cerebral Palsy
32.	Lecturer in General Medicine	Medical Education Department	Locomotor disability/Cerebral Palsy
✓ 33.	Lecturer in Arts & Commerce, Science Lecturer in Arabic	Collegiate Education Department	Locomotor disability/Cerebral Palsy, Blindness, Low vision, Hearing impairment
34.	Lecturer	College of Music	Locomotor disability/Cerebral Palsy, Blindness, Low vision
35.	Lecturer Engineering Colleges, Polytechnics	Technical Education Department	Locomotor disability/Cerebral Palsy, Low vision
36.	Lecturer	College of Nursing	Locomotor disability/Cerebral Palsy
37.	Lecturer	Dental Colleges	Locomotor disability/Cerebral Palsy
38.	Medical Officer	Indian Systems of Medicine	Locomotor disability/Cerebral Palsy
39.	Medical Officer	Homoeopathy	Locomotor disability/Cerebral Palsy
40.	Municipal Secretary Grade III	Municipal administration Department	Locomotor disability/Cerebral Palsy, Hearing impairment, Low vision
41.	Research Officer	Economics & Statistics and Planning Board	Locomotor disability/Cerebral Palsy, Hearing impairment, Low vision
42.	Scientific Assistant	Police Department	Locomotor disability/Cerebral Palsy, Hearing impairment

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			impairment
43.	Survey Superintendent	Survey Department	Locomotor disability/Cerebral Palsy, Hearing impairment
44.	Tutor/Lecturer	Govt.Homoeopathy Medical Education Department	Locomotor disability/Cerebral Palsy
45.	Tribal Extension Officer	ST Development Department	Locomotor disability/Cerebral Palsy
46.	Veterinary Surgeon	Animal Husbandry Department	Locomotor disability/Cerebral Palsy
47.	Munsiff Magistrate	Kerala State Judicial Service	Locomotor disability/Cerebral Palsy- Locomotor disability-moderate
Additional posts identified in Class I, II category			
48.	Senior Lecturer in Physiology	Medical Education Department	Locomotor disability/Cerebral Palsy
49.	Lecturer in Forensic medicine	Medical Education Department	Locomotor disability/Cerebral Palsy, Hearing impairment, Low vision
50.	Senior Lecturer in Nursing	Medical Education Department	Locomotor disability/Cerebral Palsy, Hearing impairment, Low vision
51.	Senior Lecturer in General Medicine	Medical Education Department	Locomotor disability/Cerebral Palsy, Hearing impairment, Low vision
52.	Senior Lecturer in Paediatrics	Medical Education Department	Locomotor disability/Cerebral Palsy, Hearing impairment, Low vision
53.	Tutor Technician	Medical Education Department	Locomotor disability/Cerebral Palsy, Hearing impairment, Low vision

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Annexure-B

List of additional categories of posts under Class III which are identified as suitable for appointment of Physically Disabled Candidates

Sl.No	Name of post	Name of Department	Category
1.	Higher Secondary School Teacher(Jr) Arts and Commerce	Higher Secondary Education Department	Locomotor disability/Cerebral Palsy, Blindness, Low vision
2.	Higher Secondary School Teacher(Jr) Science	Higher Secondary Education Department	Locomotor disability/Cerebral Palsy, Low vision
3.	Vocational Teacher Vocational Instructor	Vocational Higher Secondary Education Department	Locomotor disability/Cerebral Palsy, Low vision, Hearing impairment
4.	Non Vocational Teacher(Sr) Non Vocational Teacher(Jr)	Vocational Higher Secondary Education Department	Locomotor disability/Cerebral Palsy, Low vision, Hearing impairment

This is the true copy of the document marked as EXHIBIT-P in  
the Writ Petition,

Advocate.

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C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

WP(C).No. 3403 of 2015 (A)

PETITIONER:

P.RADHAKRISHNAN AGED 48 YEARS  
S/O.K.RAVUNNY KURUKKAL, KAYAMPILLY (H)  
R.V.PURAM PO VILLADOM  
THRISSUR-680 631 (COUNTER ASSISTANT VALLACHIRA DEVASWOM  
THRISSUR DISTRICT) (PRESENTLY WORKING AS OFFICE CLERK  
IN THE COCHIN DEVASWOM BOARD)

BY ADV. SRI.G.KRISHNAKUMAR

RESPONDENTS:

1. COCHIN DEVASWOM BOARD  
SWARAJ ROUND, THRISSUR-680 001 REPRESENTED BY ITS SECRETARY.
  2. SPECIAL DEVASWOM COMMISSIONER  
COCHIN DEVASWOM BOARD, SWARAJ ROUND  
THRISSUR-680 001 REPRESENTED BY ITS SECRETARY.
  3. COMMISSIONER  
DISABILITIES AND EX-OFFICIO SECRETARY TO  
GOVERNMENT OF KERALA  
ROOM NO.113, SECRETARIAT, THIRUVANANTHAPURAM-695 001.
  4. STATE OF KERALA  
REP.BY THE SECRETARY TO GOVERNMENT  
DEPARTMENT OF DEVASWOM, GOVERNMENT SECRETARIAT  
THIRUVANANTHAPURAM-695 001.
  5. SUMOD R.  
WATCHMAN CUM PEON, PANAGATTUKARA DEVASWOM  
PANANGATTUKARA P.O, VADAKKANCHERRY, THRISSUR-680 590
- R1 -R 2 BY ADVS. SRI.UNNIKRISHNAN VALAPATT, SC,  
COCHIN DEVASWOM BOARD  
SRI.KRISHNA MENON, SC, COCHIN DEVASWOM BOARD  
R3 & R4 BY GOVERNMENT PLEADER SMT. A. LOWSY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-10-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K. VINOD CHANDRAN, J.**

-----  
W.P.(C) No. 3403 of 2015 (A)  
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Dated this the 15<sup>th</sup> day of October, 2015

**J U D G M E N T**

The petitioner claims to be a disabled person with 42% locomotor disability, who is working as a temple staff under the 1<sup>st</sup> respondent Board. The petitioner seeks for reservation in appointment to the 25% vacancies earmarked for temple staff in the post of Watchman-cum-Peon. The petitioner claims reservation under The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for brevity 'Act of 1995').

2. The learned Standing Counsel for the respondent Board, however, relies on the counter affidavit, which is in line with Ext.P8 order of the respondent Board, wherein the prayer made by the petitioner was declined for reason of the respondent Board being not an 'establishment' under the Act of 1995. The issue revolves only around whether

W.P.(C) No. 3403/2015

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the respondent Board can be considered to be an 'establishment' as defined under the Act of 1995.

3. The definition available under Section 2(k) of the Act of 1995 is as follows:

"(k) "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 or a local authority or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956) and includes Departments of a Government"

4. On a reading of the definition the learned Standing Counsel would contend that the respondent Board is not a Corporation nor is it an authority or body owned or controlled or aided by the Government or a local authority or a Government Company, as specifically noticed in the definition clause. The learned counsel for the petitioner, however, would refute the contention on the basis of the decision in **Dalco Engineering Private Limited v. Satish**

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P2 (A)

W.P.(C) No. 3403/2015

-3-

**Prabhakar Padhye - (2010) 4 SCC 378** as also relying upon the provisions of the Travancore-Cochin Hindu Religious Institutions Act, 1950 (for brevity 'TCHRI Act 1950') and the definition of 'Corporation' as seen from the Black's Law Dictionary.

5. The respondent Board is constituted under the TCHRI Act 1950. The Board itself is constituted under Chapter VIII of the TCHRI Act 1950. As per Section 63 of TCHRI Act 1950, the Board shall consist of three Hindu members two of whom shall be nominated by the Hindus among the Council of Ministers and one elected by the Hindus, from among the Members of the Legislative Assembly of the State of Kerala. The procedure for election is also provided under Section 64, where a meeting of the Hindus among the members of the Legislative Assembly is to be summoned under the authority of the Governor of Kerala by any person authorised; for such election of a member to the Board.

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6. The Board under Section 68 of TCHRI Act 1950 is to administer the affairs of the incorporated and unincorporated Devaswoms under its management in accordance with the objects of a Trust. Under Section 72 of TCHRI Act 1950 the Board is deemed to be a corporate body having perpetual succession and a common seal. The administration vested in the Board under section 62 is also the administration of incorporated and unincorporated Devaswoms and Hindu Religious Institutions, which were under the management of the Ruler of Cochin immediately prior to the first day of July, 1949. In such circumstance, it cannot, at all, be said that the Board is not an "establishment" as covered under the Act of 1995. The above provisions clearly establish that the Board is a 'body corporate', established under the State Act (TCHRI Act 1950) and is an authority controlled by the Government.

7. Further, in considering whether the private companies are brought under the Act of 1995, the Hon'ble

Jb

Pa (6)

W.P.(C) No. 3403/2015

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Supreme Court in **Dalco Engineering Private Limited**

(supra) held so:

"Where definition of "establishment" uses the term "a corporation established by or under an Act", the emphasis should be on the word "established" in addition to the words "by or under". The word "established" refers to coming into existence by virtue of an enactment. It does not refer to a company, which, when it comes into existence, is governed in accordance with the provisions of the Companies Act. There is difference between "established by Central Act" and "established under a Central Act". When the words "by and under an Act" are preceded by the words "established", the reference is to a corporation established, that it is brought into existence, by an Act or under an Act. The term refers to a statutory corporation as contrasted from a non-statutory corporation incorporated or registered under the Companies Act."

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The Board herein is a body corporate established by and under the TCHRI Act, 1950. Hence, Ext.P8 would stand set aside.

8. In the matter of granting appointments, as pointed out by the learned Standing Counsel, Chapter VI of the Act of 1995 provides for identification of the vacancies in which the persons with disabilities can be appointed; which identification is to be made by the Government. Section 32 confers power on the appropriate Government to identify posts in the establishments which can be reserved for persons with disability. Section 33 provides the manner in which such appointments are to be made and ratio to be followed, also indicating the percentage of reservation, which has to be in accordance with the decision of the Hon'ble Supreme Court in Government of India v. Ravi Prakash Gupta (2010) 7 SCC 626; on an identification of the total posts and reservation being conferred on the persons with disability so as to ensure their due

W.P.(C) No. 3403/2015

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Pd (8)

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representation in the cadre.

9. In such circumstance, there shall also be a direction to the 4<sup>th</sup> respondent to expedite the exercise under Section 33 of the Act of 1995 and identify the posts, at any rate within a period of three months from today. The 1<sup>st</sup> respondent Board shall produce a certified copy of the judgment before the 4<sup>th</sup> respondent and the 4<sup>th</sup> respondent shall act in accordance with the directions herein above within the period specified.

The writ petition stands allowed. The petitioner's claim would depend upon the notification issued on the basis of the identification of the posts and his eligibility being decided from among the temple employees who come under the Act of 1995. No costs.

Sd/-  
K.VINOD CHANDRAN,  
JUDGE

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P2(9)

WP(C).No. 3403 of 2015 (A)

## APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - TRUE COPY OF THE ORDER NO.M 3387/07 DTD.4-4-2012 OF THE FIRST RESPONDENT
- EXT.P2 - TRUE COPY OF THE ORDER DATED 30-01-2014 OF THE 1ST RESPONDENT
- EXT.P3 - TRUE COPY OF THE JUDGMENT DATED 17-02-2014 IN WPC.NO.124/2013 FILED BY THE 1ST RESPONDENT
- EXT.P4 - TRUE COPY OF THE ORDER NO.5657/2013 DATED 01-03-2014 OF THE 2ND RESPONDENT
- EXT.P5 - TRUE COPY OF THE NOTIFICATION DATED 26-02-2014 OF THE 1ST RESPONDENT
- EXT.P6(A) - TRUE COPY OF THE APPLICATION DATED 17-03-2014 PREFERRED BY THE PETITIONER
- EXT.P6(B) - TRUE COPY OF THE CERTIFICATE DATED 14-3-2014 ISSUED FROM THE MEDICAL COLLEGE HOSPITAL
- EXT.P6(C) - TRUE COPY OF THE RELEVANT PAGE OF THE SSLC BOOK OF THE PETITIONER
- EXT.P6(D) - TRUE COPY OF THE CERTIFICATE DTD.17-3-2014 ISSUED BY THE DEPUTY COMMISSIONER OF THE FIRST RESPONDENT
- EXT.P7 - TRUE COPY OF THE REPRESENTATION DATED 18-03-2014 TO THE 4TH RESPONDENT
- EXT.P8 - TRUE COPY OF THE ORDER NO. M 3304/2014 DATED 31-7-2014 OF THE 2ND RESPONDENT
- EXT.P9 - TRUE COPY OF THE REPRESENTATION DATED 7-8-2014 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT BOAD
- EXT.P10 - TRUE COPY OF THE ORDER DATED 01-01-2015 OF THE 2ND RESPONDENT APPOINTING/ PROMOTING CANDIDATE FROM AMONG TEMPLE STAFF TO THE POST OF WCP/PEON

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

This is the true copy of the document marked as EXHIBIT-P in  
the Writ Petition.

Advocate.

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25/10/12

Rgd A/D

From

C.V.Balakrishnan,  
Vyshnavam, Aroor P.O,  
Cherthala, PIN – 688 534.

To

The Secretary,  
The Government of Kerala,  
Department of Social Justice, Secretariat,  
Thiruvananthapuram.

Sir,

**Subject:**

Regarding passing of Government Orders under Section 3 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

**Reference:**

(1) The Judgment of the Honourable High Court of Kerala, reported in 2015(4) KLT 523.

(2) G.O.(P)No.61/2012/SWD dated 17-10-12

1. There are a number of government aided private educational institutions in Kerala. It is respectfully submitted that since they are enjoying various aids from the Government of Kerala, they would come under the purview of 'establishment' as defined under section 2 (k) of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

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P3 (2)

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2. The above referred Government Order is passed by the Government of Kerala in accordance with section 33 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. As per the said G.O, the government has published a comprehensive list of different categories of posts which are identified for the different divisions among the disabled for appointment in public service.

3. As per the judgment referred above, the Honorable High Court of Kerala was pleased to observe that the Cochin Devaswom Board cannot at all be said that is not an 'establishment' and is a body corporate controlled by the above said Act.

4. The above said observation of the Honourable High Court of Kerala made in the above referred decision is equally applicable to all the aided colleges and schools in the state. Hence under such circumstances, it is just and necessary that necessary government orders be passed for the proper implementation of the above referred Government Order in the said institutions also.

Hence it is most respectfully prayed that necessary and immediate action may be taken so as to extent the G.O.(P)No.61/2012/SWD dated 17-10-12 to all the Government aided institutions in Kerala.

Dated this the 12<sup>th</sup> day of January, 2016.

Yours faithfully,

  
C.V. Balakrishnan

Enclosures:

(1) The Judgment of the Honourable High Court of Kerala, reported in 2015(4) KLT 523.

(2) G.O.(P)No.61/2012/SWD dated 17-10-12

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Advocate.