

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY, THE 15<sup>TH</sup> DAY OF SEPTEMBER 2022 / 24TH BHADRA, 1944

WP(C) NO. 5893 OF 2022

**PETITIONER:**

MANAGER, SUNNIYYA ARABIC COLLEGE,  
CHENNAMANGALLUR P.O., MUKKAM, KOZHIKODE-673 602.

BY ADVS.  
P.M.PAREETH  
AISWARYA VENUGOPAL

**RESPONDENTS:**

- 1 STATE OF KERALA,  
REPRESENTED BY SECRETARY TO GOVERNMENT, HIGHER EDUCATION  
DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695  
001.
- 2 DIRECTOR OF COLLEGIATE EDUCATION,  
THIRUVANANTHAPURAM-695 004.
- 3 UNIVERSITY OF CALICUT REPRESENTED BY ITS REGISTRAR, CALICUT  
UNIVERSITY P.O., MALAPPURAM DSITRICT-673 635.
- 4 THE STATE COMMISSIONER FOR PERSONS WITH DISABILITIES, KERALA,  
ANJANEYA, T.C. 9/1023(1), GROUND FLOOR, SASTHAMANGALAM,  
THIRUVANANTHAPURAM-695 010.
- 5 SAFEENA ATHIYOTTUKUNNUMMAL,  
ATHIYOTTUKUNNUMMAL, VELOM PERUVAYAL, KUTTIADI, KOZHIKODE-673  
508.

BY ADVS.  
SRI.P.C.SASIDHARAN, SC, CALICUT UNIVERSITY  
P.K.NANDINI  
A.P.JAYARAJ (ANJILIKKAL)  
JUBYRAJ.A.P  
JISHAMOL CLEETUS

SMT.RESMI THOMAS-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
15.09.2022, ALONG WITH WP(C).9709/2022, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:

W.P.(C) No. 5893 of 2022.  
W.P.(C) No. 9709 of 2022.

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**  
**PRESENT**  
**THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN**  
**THURSDAY, THE 15<sup>TH</sup> DAY OF SEPTEMBER 2022 / 24TH BHADRA,**  
**1944**  
**WP(C) NO. 9709 OF 2022**

**PETITIONER:**

ABOBACKER E.K  
ASSISTANT PROFESSOR,  
SUNNIYYA ARABIC COLLEGE,  
CHENNAMANGALLUR,  
MUKKOM, KOZHIKODE,  
PIN-673602.

BY ADVS.  
S.P.ARAVINDAKSHAN PILLAY  
N.SANTHA  
V.VARGHESE  
PETER JOSE CHRISTO  
S.A.ANAND  
K.N.REMYA  
L.ANNAPOORNA  
VISHNU V.K.  
ABHIRAMI K. UDAY  
KURUVILLA SABU CHRISTY

W.P.(C) No. 5893 of 2022.  
W.P.(C) No. 9709 of 2022.

**RESPONDENTS:**

- 1 STATE OF KERALA  
REPRESENTED BY THE SECRETARY TO GOVERNMENT,  
SOCIAL JUSTICE DEPARTMENT, SECRETARIAT,  
THIRUVANANTHAPURAM, PIN-695001.
- 2 SECRETARY TO GOVERNMENT  
SOCIAL JUSTICE DEPARTMENT, SECRETARIAT,  
THIRUVANANTHAPURAM, PIN-695001.
- 3 THE DIRECTOR OF COLLEGIATE EDUCATION  
DIRECTORATE OF COLLEGIATE EDUCATION, VIKAS  
BHAVAN.P.O, THIRUVANANTHAPURAM, PIN-695033.
- 4 THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION  
OFFICE OF THE DEPUTY DIRECTOR OF COLLEGIATE  
EDUCATION, MANANCHIRA, KOZHIKODE, PIN-673001.
- 5 UNIVERSITY OF CALICUT  
REPRESENTED BY ITS REGISTRAR, CALICUT  
UNIVERSITY.P.O, MALAPPURAM DISTRICT, PIN-673635.
- 6 MANAGER,  
SUNNIYYA ARABIC COLLEGE, CHENNAMANGALLUR,  
MUKKOM, KOZHIKODE, PIN-673602.
- 7 STATE COMMISSIONER FOR PERSONS WITH  
DISABILITIES, KERALA, 'ANJANEYA', TC 9/1023(1),  
GROUND FLOOR, SASTHAMANGALAM,  
THIRUVANANTHAPURAM, PIN-695010.
- 8 SAFEENA ATHIYOTTUKUNNUMMAL,

W.P.(C) No. 5893 of 2022.  
W.P.(C) No. 9709 of 2022.

VELOM PERUVAYAL, KUTTIYADI, KOZHIKODE,  
PIN-673508.

BY ADVS.

SRI.P.C.SASIDHARAN, SC, CALICUT UNIVERSITY

P.M.PAREETH

P.K.NANDINI

AISWARYA VENUGOPAL

NAJEEB P.S

JUBYRAJ.A.P

A.P.JAYARAJ (ANJILIKKAL)

JISHAMOL CLEETUS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
15.09.2022, ALONG WITH WP(C).5893/2022, THE COURT ON THE SAME  
DAY DELIVERED THE FOLLOWING:

W.P.(C) No. 5893 of 2022.  
W.P.(C) No. 9709 of 2022.

**C.R.**

## **JUDGMENT**

**Dated this the 15<sup>th</sup> day of September, 2022.**

I am considering these two writ petitions together since, under challenge in them, is the same order issued by the State Commissioner for Persons with Disabilities, Kerala ("Commissioner" for short).

2. The proceedings before the Commissioner began on an application made by Smt.Safeena A. - who has been arrayed as a respondent in both these matters, alleging that the Manager of the "Sunniyya Arabic College" (College for short) has appointed Sri.Aboobacker

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E.K. (petitioner in W.P.(C).No.9709 of 2022) as an Assistant Professor, in violation of the Right of Persons with Disabilities Act, 2016 ("RPwD Act" for short)

3. The specific contention of Smt.Safeena A. before the Commissioner was that the Manager of the College could not have filled up the post in question through a notification inviting candidates solely from the general category, since it ought to have been reserved for persons with disabilities under the "RPwD Act", because the Government of Kerala had issued orders as early as on 31.10.2019, implementing the said Act, fixing the roster posts for being filled up with various categories of persons with disabilities. She submitted before the Commissioner that since the vacancy in question can only be construed as being a "backlog

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one”, the notification could have invited persons with disabilities alone and not anybody from the general category; but that, in flagrant violation of the same, he issued the impugned one deliberately suppressing the afore fact and then appointed Sri.Aboobacker E.K. from the general category.

4. It transpires, from the impugned order of the Commissioner - a copy of which has been produced as Ext.P9 in W.P.(C).No.5893 of 2022 and as Ext.P6 in W.P.(C).No.9709 of 2022, that the said Authority found in favour of Smt.Safeena A. and directed that the Manager of the College to issue “necessary order” for her appointment as Assistant Professor within three months. Certain corollary directions were also issued, including to the University of Calicut, not to approve the appointment

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of Sri.Aboobacker E.K.; and finally directing the Manager to file an action taken report under Section 81 of the RPwD Act.

5. The afore order of the Commissioner has been challenged by the Manager of the College in W.P.(C).No.5893 of 2022 and by Sri.Aboobacker E.K. in W.P.(C).No.9709 of 2022.

6. I have heard Sri.P.M.Pareeth - learned counsel for the petitioner in W.P.(C).No.5893 of 2022; Sri.Peter Jose Christo - learned counsel for the petitioner in W.P.(C).No.9709 of 2022; Smt.P.K.Nandini - learned counsel appearing for Smt.Safeena A.; Sri.P.C.Sasidharan - learned Standing Counsel for the Calicut University and Smt.Resmi Thomas - learned Government Pleader appearing for the official respondents.



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7. Before I continue, I must upfront place on record certain concerns of this Court *qua* the impugned order of the Commissioner. For the first, the said order directs the Manager of the College to appoint the petitioner as an Assistant Professor, though it is conceded that she belongs to the "loco-motor disabled category" and is not "blind" or "hearing impaired". This is crucial because, going by Section 34 of the RPwD Act, even if the post in question was one which was deserving of being reserved for candidates under its ambit, it could have been offered only to a "blind" candidate and to no one else. It is only if no such candidate is available and consequently, a fresh notification issued, wherein, again persons from the "blind" or "the hearing impaired" categories are not available, can a person like the

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petitioner, with locomotor disability, be considered. However, the Commissioner has travelled around these provisions merely saying that since *"there was no claim for appointment in the college raised by a person belonging to blind/low vision category, the petitioner's claim for appointment under the locomotor disability/cerebral palsy is sustainable"* (sic).

8. Obviously, the afore holdings of the Commissioner cannot find favour in law and the impugned order is axiomatically rendered liable to be set aside on that short ground alone.

9. That apart, and for the second, a question ought to have been raised and considered as to whether it was the vacancy in question which was liable to be reserved for persons under the "RPwD Act". This is

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because, going by the appointments made in the College from the year 1995, eight persons were offered placements until 2005; while the next post was offered to a person by name Sri.Muhmmed Mukthar P.P., on 01.07.2020. I must, at this juncture, add that the aforementioned Sri.Muhmmed Mukthar P.P. is not a party to these cases, but that the fact remains that the first backlog vacancy under the "RPwD Act" could well have been the one which was offered to him. Of course, the contra argument of the Manager of the College and of Sri.Aboobacker E.K. is that the provisions of "RPwD Act" could have been implemented in the College only after the Government issued its subsequent order dated 18.05.2022 - a copy of which is on record as Ext.P11, along with W.P.(C).No.5893 of 2022.

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10. Suffice to say, none of these issues have been considered by the Commissioner while the impugned order has been issued and the said Authority has presumed that the vacancy in question was the one liable to be reserved for persons under the "RPwD Act". This issue is portentous as far as the parties to this case is concerned because, there can be no doubt - it being conceded by all - that the College can concede only to one appointment under the "RPwD Act", whether it be a "backlog vacancy" or otherwise - it having made only 15 or so appointments from the year 1995, when it began functioning.

11. Indubitably, therefore, the afore legal and factual issues ought to have been considered by the Commissioner, before an order akin to the one impugned

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herein could have been issued.

12. At this time, I must certainly record the submission of Sri.Peter Jose Christo, that the claim of Smt.Safeena A. is unethical, because she is already working as a High School Assistant in a Government School, while his client was unemployed until he was offered the post in question by the College. However, I do not think that this argument is relevant or germane as far as the issues in controversy goes, since, they are exclusively in the realm of law, in the consideration which "ethical" constraints, if any, cannot, normally, apply.

13. That being so said, as I have already found above, the order of the Commissioner impugned in these writ petitions certainly cannot obtain the imprimatur of

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this Court and the matter will require to be reconsidered by the said Authority in its proper perspective. This is also because an assertion has been made at the Bar by Sri.Peter Jose Christo, that his client - Sri.Aboobacker E.K., had not been heard by the Commissioner.

Resultantly, I order these writ petitions and set aside the orders impugned therein, namely Ext.P9 in W.P.(C).No.5893 of 2022 and Ext.P6 in W.P.(C).No.9709 of 2022; with a consequential direction to the Commissioner to reconsider the complaint of Smt.Safeena A., adverting to my observations above and after affording an opportunity of being heard to every party, including Sri.Aboobacker E.K.; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible but not later than four

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months from the date of receipt of a copy of this judgment.

Needless to say, until such time as the afore exercise is completed and the resultant order communicated to all parties, *status quo* with respect to the appointment of Sri.Aboobacker E.K. will continue and if he has already been granted approval in terms of the earlier interim order of this Court, he will be eligible to draw salary and other entitled emoluments for the period he works.

Sd/-  
**DEVAN RAMACHANDRAN**  
**JUDGE**

Raj.  
16.09.2022.

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**APPENDIX OF WP(C) 9709/2022**

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF APPOINTMENT ORDER  
NO.SAC/A/TS/AEK/21 DATED 07.07.2021 OF  
THE 6TH RESPONDENT MANAGER.
- Exhibit P2 TRUE COPY OF MINUTES OF THE MEETING OF  
THE SECTION COMMITTEE HELD ON  
06.07.2021.
- Exhibit P3 TRUE COPY OF THE G.O(P)NO.18/2018/SJD  
DATED 18.11.2018.
- Exhibit P4 TRUE COPY OF G.O.(MS)NO.96/2021/H.EDN  
DATED 15.02.2021
- Exhibit P5 TRUE COPY OF THE APPOINTMENT LIST OF  
TEACHING STAFF OF THE SUNNIYYA ARABIC  
COLLEGE ISSUED BY THE 6TH RESPONDENT  
ON 08.07.2021.
- Exhibit P6 TRUE COPY OF THE ORDER  
NO.OP(RPWD)NO.4537/S3/2021 OF THE 7TH  
RESPONDENT
- Exhibit P7 TRUE COPY OF INTERIM ORDER DATED  
22.02.2022 IN W.P.(C)NO.5893/2022 OF  
THIS HON'BLE COURT.

RESPONDENT EXHIBITS

- Exhibit R8(a) TRUE COPY OF ORDER DATED 31/10/2019  
ISSUED BY SOCIAL JUSTICE DEPT,



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GOVERNMENT OF KERALA

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**APPENDIX OF WP(C) 5893/2022**

PETITIONER EXHIBITS

- Exhibit P1            A TRUE PHOTOCOPY OF THE GO(P0  
NO.18/2018/SJD DATED18.11.2018.
- Exhibit P2            A TRUE PHOTOCOPY OF THE GO(MS)  
NO.96/2021/HEDN DATED 15.02.2021.
- Exhibit P3            A TRUE PHOTOCOPY OF THE GO(MS)  
NO.122/2021/HEDN DATED 18.02.2021.
- Exhibit P3 A         A TRUE PHOTOCOPY OF THE DETAILS OF  
APPOINTMENT OF TEACHING STAFF DATED  
08.07.2021 MADE FROM 17.07.1995 TO  
09.07.2021.
- Exhibit P4            A TRUE PHOTOCOPY OF THE APPLICATION  
DATED 23.03.3032 SUBMITTED BY THE  
FIFTH RESPONDENT.
- Exhibit P5            A TRUE PHOTOCOPY OF THE PRE INTERVIEW  
SCHEDULE IN RESPECT OF THE FIFTH  
RESPONDENT.
- Exhibit P6            A TRUE PHOTOCOPY OF THE DETAILS OF  
MARK AWARDED TO THE CANDIDATES IN THE  
INTERVIEW DATED 06.07.2021.
- Exhibit P6 A         A TRUE PHOTOCOPY OF THE APPOINTMENT  
ORDER DATED 07.07.2021 APPOINTING  
DR.ABOOBACKER E.K. AS VISITANT  
PROFESSOR IN ARABIC.

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- Exhibit P7                    A TRUE PHOTOCOPY OF THE LETTER DATED  
11.11.2021 TOGETHER WITH PROFORMA AND  
CERTIFICATE.
- Exhibit P7 A                ENGLISH TRANSLATION OF EXHIBIT P7.
- Exhibit P8                    A TRUE PHOTOCOPY OF THE COMPLAINT  
DATED 16.12.2021 SUBMITTED BY THE  
FIFTH RESPONDENT BEFORE THE FOURTH  
RESPONDENT.
- Exhibit P9                    A TRUE PHOTOCOPY OF THE ORDER DATED  
17.01.2022 IN OP(RPWD) NO.4537/S3/2021  
ISSUED BY THE FOURTH RESPONDENT.
- Exhibit P10                 A TRUE PHOTOCOPY OF THE LETTER OF NON  
ACCEPTANCE DATED 16.02.2022 SUBMITTED  
BY THE PETITIONER BEFORE THE FOURTH  
RESPONDENT.

RESPONDENT EXHIBITS

- Exhibit R5(A)                TRUE COPY OF THE ORDER DATED  
31/10/2019 ISSUED BY THE SOCIAL  
JUSTICE DEPARTMENT, GOVERNMENT OF  
KERALA

PETITIONER EXHIBITS

- Exhibit P11                 A TRUE COPY OF THE GO(MS) NO.  
242/2022/HEDN DATED 18-05-2022.
- Exhibit P12                 A TRUE COPY OF THE ORDER  
NO.U.O.NO.10430/2022/ADMN DATED 24-05-  
2022 GRANTING PROVISIONAL APPROVAL BY

W.P.(C) No. 5893 of 2022.  
W.P.(C) No. 9709 of 2022.

UNIVERSITY OF CALICUT.