



HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION Nos. 24475, 3758 & 22582 of 2021

W.P.No.24475 of 2021

Between:

Sripada Sai Ram

.....PETITIONER

AND

The State of Andhra Pradesh, rep.by its
Principal Secretary, Department of Animal
Husbandry and Fisheries, Secretariat,
Velagapudi, Amaravathi,
Guntur District and another

.....RESPONDENTS

W.P.No.3758 of 2021

Between:

Metta Jyotsna and another

.....PETITIONERS

AND

The State of Andhra Pradesh, rep.by its
Principal Secretary, Department of Animal
Husbandry and Fisheries, Secretariat,
Velagapudi, Amaravathi,
Guntur District and another

.....RESPONDENTS

W.P.No.22582 of 2021

Between:

Metta Jyotsna and another

.....PETITIONERS

AND

The State of Andhra Pradesh, rep.by its
Principal Secretary, Department of Animal
Husbandry and Fisheries, Secretariat,
Velagapudi, Amaravathi,
Guntur District and another

.....RESPONDENTS



DATE OF COMMON JUDGMENT PRONOUNCED: **21.10.2022**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J



*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

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! Counsel for the Petitioners: Sri M. Pitchaiah

^ Counsel for the respondents: Sri N. Aswartha Narayana,
Govt. Pleader for Services – I

< Gist :

> Head Note:

? Cases Referred:

1. (1978) 4 SCC 16
2. 2003 (1) ALT 127
3. 2021 SCC Online AP 511
4. (2021) 9 SCC 208
5. (1992) 1 SCC 335
6. (2018) 9 SCC 766
7. (2019) 14 SCC 794
8. (2002) 3 SCC 481
9. AIR 1961 SC 838



THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION Nos. 24475, 3758 & 22582 of 2021

COMMON JUDGMENT:

Heard Sri M. Pitchaiah, learned counsel for the petitioners and Sri N. Aswartha Narayana, learned Government Pleader for Services-I, for the respondents in all the writ petitions.

2. In **W.P.No.3758 of 2021** the petitioners are challenging G.O.Ms.No.2, Animal Husbandry, Dairy Development & Fisheries (AH.I) Department, dated 05.01.2021, issued by the 1st respondent-the State of Andhra Pradesh being violative of Articles 14, 16 and 21 of the Constitution of India and the provisions of the Rights of Persons with Disabilities Act 2016 (in short 'the Act 2016').

3. The 1st petitioner – Metta Jyotsna is a physically handicapped person, suffering from low vision to the extent of 40% as certified by the Medical Board of Rajiv Gandhi Institute Medical Sciences, Srikakulam on 25.03.2014 covered under the benchmark disability within the meaning of the Act 2016. The 1st petitioner is a Graduate in Bachelor of Veterinary Sciences (in short 'B.V.Sc') and Animal Husbandry (A.H) and she studied in N.T.R.Veterinary Science and Animal Husbandry College, Gannavaram, Krishna District during the academic year 2013-18.

4. The 2nd petitioner – Maddirala Avula Reddy is Graduate in B.V.Sc. and A.H. and studied the same during the academic years 2013-18 in the same N.T.R.Veterinary Science and Animal Husbandry College, Gannavaram and he is



visually handicapped (V.H)i.e., low vision to the extent of 40% as certified by the Medical Board of Rajiv Gandhi Institute of Medical Science, Ongole.

5. **W.P.No.22582 of 2021** has been filed by the same petitioners as in **W.P.No.3758 of 2021** and **W.P.No.24475 of 2021** has been filed by Sripada Sai Ram challenging the Notification in Roc.No.917/BII/B2/2021, dated 24.09.2021, issued by the 2nd respondent-the Director of Animal Husbandry, Labbipet, Vijayawada, Krishna District, Andhra Pradesh, by which, applications are invited from eligible candidates for recruitment of differently abled Orthopedically Handicapped (O.H) for 12 posts of Veterinary Assistant Surgeons under backlog vacancy of Class-A category (6) in Andhra Pradesh Animal Husbandry Department.

6. The petitioner in W.P.No.24475 of 2021 is a Graduate in B.V.Sc and A.H and studied during the academic year 2015-16 in the college of Veterinary Science, Tirupathi, which is affiliated to Sri Venkateswara Veterinary University, Tirupathi and passed in the year 2021. This petitioner is a physically handicapped person suffering from low vision (VH), as certified by the Medical Board of Government District Head Quarters Hospital, Eluru, West Godavari District on 06.12.2012, i.e., 40% of low vision.

7. Thus, in W.P.No.3758 of 2021 there is challenge to G.O.Ms.No.2, dated 05.01.2021 and in W.P.No.22582 of 2021 and W.P.No.24475 of 2021 there is challenge to the notification dated 24.09.2021.

8. The G.O.Ms.No.2, dated 05.01.2021 and the Notification dated 24.09.2021 have been challenged mainly on the common ground that it violates



the equality clause inasmuch as certain class of physically handicapped i.e., O.H.category has been given undue advantage over other class of physically handicapped persons and thereby singling out the remaining physically handicapped classes or categories for hostile treatment which deprives them the equal opportunity and level playing field on par with orthopedically handicapped persons. The challenge is on the ground of discrimination being made contrary to Sections 3, 4, 20, 21 and 34 of the Act 2016 and being violative of Article 14 of the Constitution of India.

9. The grounds of challenge being common, with the consent of the parties' counsels all the three writ petitions are being decided by the common judgment.

10. Sri M. Pitchaiah, learned counsel for the petitioner, submitted that Section 34 of the Act 2016 provides that every appropriate Government shall appoint in every Government establishment not less than 4% of the total number of vacancies in the cadre strength in each group of the posts meant to be filled with persons with benchmark disabilities of which 1% each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and 1% for persons with benchmark disabilities under clauses (d) and (e). The petitioners fall under Section 34 (1) (a) – "blindness and low vision" and are entitled to be given 1% out of 4% reservation but the impugned notification does not provide for reservation in favour of the persons suffering from blindness and low vision.



11. Sri M. Pitchaiah further submitted that the second proviso to Section 34 of the Act 2016 makes it clear that the appropriate Government, in consultation with the Chief Commissioner, appointed under Section 79 of the Act, for the welfare of the physically handicapped grant exemption to an establishment from the application of Section 34 of the Act 2016 and as such as and when a question arises as to whether a particular class of physically disabled persons in Section 34 of the Act 2016 will be able to discharge a particular type of work carried out in any Government establishment or not that question must be deeply gone into and studies by technical experts in the field and in consultation with the State Commissioner, the State Government should decide the same and so long as such decision is not taken, any government establishment cannot be exempted from the applicability of Section 34. The persons suffering from disability of specified category, clauses (a) to (e) would equally be entitled for reservation which could not be confined only to OH category.

12. Sri M. Pitchaiah further submitted that the petitioner was allotted seat in B.V.Sc and A.H. under Visually Handicapped (for short 'VH') category in common entrance examination conducted by Sri Venkateswara Veterinary University, Tirupathi in the year 2015. He studied the said course for 5 years and also underwent internship and after having been given practical training for a period of 6 months and after completion of the same, he cannot be said to be ineligible for claiming employment for the post of Veterinary Assistant Surgeon. The petitioner was with A.P. Veterinary Council, which is a statutory body



constituted under Indian Veterinary Council Act 1984 and the said Council issued certificate in the year 2021, which demonstrates that the petitioner is entitled to practice as Veterinary Surgeon in the State of Andhra Pradesh and can treat and conduct operations of animals. The impugned notification, therefore runs counter to the legislative policy of the State under the Indian Veterinary Council Act 1984. There is also no basis in singling out all other categories of physically handicapped other than OH and there is no nexus between such deprivation and the object sought to be achieved by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995 (Act.1 of 1996). Sri M. Pitchaiah submitted that under the Rules framed under G.O.Ms.No.54, dated 06.06.1996, a candidate should possess Bachelor Degree i.e, degree in Veterinary Science for appointment to the post of Veterinary Assistant Surgeon and the petitioners possess that qualification and are entitled to apply for the said post pursuant to the impugned notification.

13. Learned counsel for the petitioners placed reliance on the judgments in the cases of ***U.P.State Electricity Board v. Hari Shanker Jain***¹, ***Perambaduru Murali Krishna v. State of A.P.***², ***Dr. M. Reddi Bhaskar Reddy v. State of A.P.***³ and ***State of Kerala v. Leesamma Joseph***⁴ in support of his contentions.

¹ (1978) 4 SCC 16

² 2003 (1) ALT 127

³ 2021 SCC Online AP 511

⁴ (2021) 9 SCC 208



14. Sri N. Aswartha Narayana, learned Govt.Pleader, submitted that the post of Veterinary Assistant Surgeon is governed by the Andhra Pradesh State Animal Husbandry Service Rules 1996 issued vide G.O.Ms.No.54, Animal Husbandry and fisheries (AH-I), dated 06.06.1996. The method of recruitment for the post of Veterinary Assistant Surgeon is by direct recruitment and the Director of Animal Husbandry is the appointing authority. He further submitted that the veterinarians *inter alia* are required to discharge certain important functions like (i) scientific way of treating the ailing animals and relieving them from suffering; (ii) attending the artificial insemination work, pregnancy diagnosis, microscopical examination of stool, blood smears etc; (iii) attending the post-mortem and medico-legal cases, (iv) control of epidemics etc., and while diagnosing the animals there are chances that the visually handicapped and the hearing impaired persons may get harmed, and in view of the nature of duties to be performed by the Veterinary Assistant Surgeon in the Animal Husbandry Department, the said posts are being filled as per the reservation quota of disabled persons but with orthopedically handicapped (OH) persons only.

15. Sri N. Aswartha Narayana has further submitted that in consonance with the provision of Section 34 of the Act 2016 the Government made provision of 4% reservation to the disabled persons in appointment and promotions in every Government establishment vide G.O.Ms.No.2, WCD&SC (Prog.II) Department dated 19.02.2020 with further provision that keeping in view the nature of duties to be performed by the employees in a particular



department, the department may seek partial or full exemption from such reservation, to be decided by the Government for which inter-departmental committee as per para-8 of G.O.Ms.No.2, dated 19.02.2020 was constituted. He further submitted that pursuant to G.O.Ms.No.2, dated 19.02.2020, the Director (AH) vide letter dated 22.04.2022 requested the State Government for exemption from implementation of reservations to non-ortho disabled persons, as the same was being followed in terms of Rule-4 (a) of the Rules 1996. The WCD&SC Department to which the matter was referred, gave consent duly informing that the inter-departmental committee in its meeting dated 06.11.2020 accorded permission to fill the posts of Veterinary Assistant Surgeons with persons with Loco-motor disability in the place of persons with blindness and low vision, deaf and hard of hearing persons and persons with autism, intellectual disability, specific learning disability, mental illness and multiple disabilities in the department of Animal Husbandry and in pursuance of the permission accorded by the WCD&SC Department (Inter Departmental Committee), the Animal Husbandry Department issued orders for filling the post of Veterinary Assistant Surgeons in Animal Husbandry Department with persons suffering from OH category disability vide G.O.Ms.No.2, dated 05.01.2021.

16. Sri N. Aswartha Narayana further submitted that the rule of special reservation in respect of disabled persons are being followed since 1996 under which only orthopedically disabled persons are eligible for the posts of Veterinary Assistant Surgeons in Animal Husbandry and presently also the same continues in terms of G.O.Ms.No.2, dated 05.01.2021. The notification has



been issued in consonance with G.O.Ms.No.2, dated 05.01.2021 and consequently the petitioners belonging to the other category of disability (VH) cannot claim consideration against the post of Veterinary Assistant Surgeons. However, pursuant to the interim order dated 08.10.2021 in I.A.No.1 of 2021 in W.P.No.22582 of 2021, the petitioners' applications were received and acknowledgments given to them by extending the date of receipt of applications but they have no right and the writ petitions deserve to be dismissed.

17. He further submitted that in W.P.No.3758 of 2021 the 2nd respondent has filed additional counter affidavit dated 08.07.2022 pursuant to the order of this Court with respect to the appointment of the State Commissioner as per Section 79 of the Act 2016, submitting that the Government of Andhra Pradesh has designated the Director, Welfare of Differently Abled & Senior Citizens' as the State Commissioner for the persons with disabilities under Section 79 of the Act 2016.

18. Sri N. Aswartha Narayana placed reliance on the judgment in the case of ***R. S. Raghunath v. State of Karnataka***⁵ in support of his contentions.

19. I have considered the submissions advanced by learned counsels for the parties and perused the material on record.

20. In view of the submissions advanced, the following point arise for consideration and determination:

⁵ (1992) 1 SCC 335



“Whether the impugned G.O.Ms.No.2, dated 05.01.2021 and the Notification dated 24.09.2021 suffer from violation of Article 14 of the Constitution of India and Section 34 of the Act 2016?”

21. To consider the aforesaid point, it is pertinent to mention that the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short “Act 1 of 1996”) has been enacted, as the Preamble of the Act itself indicates, to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. In a meeting to launch the Asian and Pacific Decade of the Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asian and Pacific Region, which was held at Beijing on 1st to 5th December, 1992, a proclamation was adopted on the Full Participation and Equality of People with Disabilities in the Asian and the Pacific Region. Our India is a signatory to the said proclamation. The proclamation was on the following lines:

“To give full effect to the proclamation it was felt necessary to enact a legislation to provide for the following matters:

- (i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;
- (ii) to create barrier free environment for persons with disabilities;



(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis non-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and

(vi) to make special provision of the integration of persons with disabilities into the social mainstream."

22. Section 33 of the Act 1 of 1996 provided as under:

"33. 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) Loco motor disability or cerebral palsy, in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

23. Section 33 of the Act 1 of 1996 therefore directed every appropriate Government to appoint in every establishment such percentage of vacancies not less than 3% for persons or class of persons suffering from (i) Blindness or low vision, (ii) Hearing impairment, and (iii) Loco Motor disability or cerebral palsy in the posts identified for each disability.



24. Proviso to Section 33 of the Act 1 of 1996, provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of the section.

25. The State Government framed special rules to the Andhra Pradesh State Animal Husbandry Services vide G.O.Ms.No.54, dated 06.06.1996, to be called as the "the Andhra Pradesh State Animal Husbandry Service Rules, 1996" (in short "the Special Rules 1996") in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and all other powers here unto enabling and in supersession of the Special Rules issued in G.O.Ms.No.729, Forest and Rural Development (AH-I) Department, Dated 24.09.1977 and as amended from time to time and all the Adhoc Rules issued from time to time governing the various posts in Andhra Pradesh Animal Husbandry Services, which would include proviso to Section 33 of the Act 1996.

26. As per Rule-2 of the Special Rules 1996, the post of Veterinary Assistant Surgeon is in Class-A, Category (6) and the method of appointment provided in Rule-3 of the Rules 1996 is by direct recruitment, the Director of Animal Husbandry being the appointing authority.

27. Rule-4(a) of the Rules 1996 provided that the rule of Special representation (General Rule-22) shall apply to appointment by direct recruitment to the post of Veterinary Assistant Surgeons. The rule of special



representation in so far as it relates to physically handicapped persons shall apply only to orthopedically handicapped persons.

28. Rule 4 of the Andhra Pradesh Animal Husbandry Service Rules 1996 reads as under:

“Rule-4: Reservation of Appointment:

- (a) The rule of Special representation (General Rule-22) shall apply to appointment by direct recruitment to the posts of Veterinary Assistant Surgeons. The rule of Special representation in so far as it relates to physically handicapped persons shall apply only to orthopedically handicapped persons.
- (b) In the matter of Direct Recruitment to the post of Veterinary Assistant Surgeons, Women shall be selected to an extent of atleast 33-1/3% of posts in each Category of other Castes, Backward Class-A, Backward Class-B, Backward Class-C, Backward Class-D, Scheduled Tribes and Physically Handicapped persons. Provided that if sufficient number of women candidates are not available such vacancies may be filled by men candidates.”

29. The A.P.State and Subordinate Service Rules, 1996 (in short ‘the General Rules 1996’) is the general rule, as referred to in the Special Rules 1996.

30. Rule 22 of the General Rules 1996 provides as under:

“Rule-22: Physically handicapped person: “Physically handicapped person” means a person who is blind, deaf or orthopedically handicapped.

Explanation:- A person is said to be,

- (i) blind, if he is suffering from total absence of sight or visual acuity not exceeding 3-60 or 10/200 (snellen) in the better eye with correcting lenses;
- (ii) deaf, if his sense of hearing is fully non-functional for the ordinary purposes of life;



- (iii) orthopedically handicapped, if he has a physical defect or deformity which causes so much interference as to significantly impede normal functioning of the bones, muscles and joints.”

31. The Act of 2016 was reenacted by Parliament and thereby the Act of 1996 was repealed.

32. It is clear from the Statement of Objects and Reasons of 2016 Act that since after enactment of Act of 1996, over a period of time, the conceptual understanding of the rights of persons with disabilities became more clear and there has been worldwide change in approach to handle the issues concerning persons with disabilities. The United Nations adopted its Convention on the Rights of persons with Disabilities laying down the principles to be followed by the States Parties for empowerment of persons with disabilities. India signed the said Convention and subsequently ratified the same on the 1st day of October, 2007. The convention came into effect on the 3rd day of May, 2008. Being a signatory to the Convention, India has an international obligation to comply with the provisions of the said Convention which required an entirely new legislation. Consequently, the earlier Act of 1996 i.e., Act No.1 of 1996 was repealed with new legislation on the same subject by Act No.49 of 2016.

33. Section 34 of the Rights of Persons with Disabilities Act 2016 reads as under:

“**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.”

34. A bare reading of Section 34 of the Act 2016 shows that every Government shall appoint in every Government establishment not less than 4% of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which 1% each shall be reserved for the persons with benchmark disabilities under clauses (a) blindness and low vision, (b) deaf and hard of hearing, and (c) locomotor



disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;; and 1% for the persons with benchmark disabilities under clauses (d) autism, intellectual disability, specific learning disability and mental illness, and (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities.

35. As per the second proviso of Section 34, 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 Section 34.

36. The expression 'appropriate Government' has been defined under Section 2 (b) of the Act 2016 as follows:

“2.Definitions:- In this Act, unless the context otherwise requires:-

(b) “appropriate Government” means,--

- i. in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006 (41 of 2006), the Central Government.
- ii. In relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government.”

37. As the matter pertains to the Animal Husbandry Department of the State Government, the A.P.State Government is the appropriate Government.



38. The Chief Commissioner and the State Commissioner as used in the second proviso to Section 34 are provided under Chapter-XII of the Act 2016.

39. Section 74 of the Act 2016 provides that the Central Government may, by notification, appoint a Chief Commissioner for Persons with Disabilities (to be called as "Chief Commissioner") for the purposes of the Act 2016.

40. Section 79 of the Act 2016 provides for the appointment of the State Commissioner in the States, according to which the State Government may, by notification, appoint a State Commissioner for Persons with Disabilities (to be called as "State Commissioner") for the purposes of the Act 2016.

41. Section 79 of the Act 2016 provides as under:

"79.Appointment of State Commissioner in States:-.

(1) The State Government may, by notification, appoint a State Commissioner for Persons with Disabilities (hereinafter referred to as the "State Commissioner") for the purposes of this Act.

(2) A person shall not be qualified for appointment as the State Commissioner unless he has special knowledge or practical experience in respect of matters relating to rehabilitation.

(3) The salary and allowances payable to and other terms and conditions of service (including pension, gratuity and other retirement benefits) of the State Commissioner shall be such as may be prescribed by the State Government.

(4) The State Government shall determine the nature and categories of officers and other employees required to assist the State Commissioner in the discharge of his functions and provide the State Commissioner with such officers and other employees as it thinks fit.

(5) The officers and employees provided to the State Commissioner shall discharge his functions under the general superintendence and control of the State Commissioner.



(6) The salaries and allowances and other conditions of service of officers and employees shall be such as may be prescribed by the State Government.

(7) The State Commissioner shall be assisted by an advisory committee comprising of not more than five members drawn from the experts in the disability sector in such manner as may be prescribed by the State Government.”

42. Thus, the appropriate Government, in the case of State, the State Government, has to take decision, in consultation with the State Commissioner for persons with disabilities, having regard to the type of work carried out in such Government establishments, and by notification and subject to such conditions if any, as may be specified in the notification, exempt any Government establishment from the provision of Section 34 of the Act 2016.

43. Pursuant to Section 34 (1) of the Rights of Persons with Disabilities Act, 2016, the State Government issued G.O.Ms.No.2, Department or Women, Children, Differently abled and Senior Citizens (Prog.II), dated 19.02.2020, which is being reproduced as under:

“GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Department for Women, Children, Differently Abled and Senior Citizens- Providing four percent (4%) reservation in appointment and in promotions in every Government establishment in favour of benchmark disabilities as per the section 34 of the Rights of Persons with Disabilities Act, 2016- Comprehensive Orders-Issued.

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DEPARTMENT FOR WOMEN, CHILDREN, DIFFERENTLY ABLED AND
SENIOR CITIZENS(Prog.II)

G.O.Ms.No.2

Dated:19-02-2020.
Read the following:-

1. G.O.Ms.No.23, Deptt., for Women, Children, Disabled & Senior



- Citizens(DW),dated 26.05.2011.
2. G.O.Ms.No.99, G.A (Ser.D)Deptt., dated 04.03.2013.
 3. G.O.Ms.No.3, Deptt., for WCDA & SC, dated.12.02.2015.
 4. G.O.Ms.No.42,Deptt., of WCDA&SC(DW)dt.19.10.2011
 5. G.O.Ms.No.188, GA(Ser.D)Deptt., dated 18.12.2017.
 6. G.O.Ms.No.4, Deptt., for WCDA & SC, dated 09.02.2019.
 7. From the Director, Welfare of Differently Abled, Transgender & Senior Citizens, A.P, Lr.No.D2/2637/2017,dt.26.06.2019.
 8. From the Secretary, APPSC, Lr.No.59/R&R/2020, Dt:14.02.2020.

ORDER:-

In consonance with the provisions of section 36 of The Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995 (Central Act No.1 of 1996), Government have issued comprehensive orders vide G.O. 1st read above for providing three percent (3%) reservation in case of Direct Recruitment for persons or class of persons with disability of which one percent, each shall be reserved for persons suffering from (a) blindness or low vision; (b) hearing impairment;

(c) locomotor disability or cerebral palsy. Accordingly, orders were issued, vide G.O. 2nd read above, earmarking three percent (3%) of vacancies in case of direct recruitment for persons or class of persons with disability and had carried out necessary amendment to Rule-22 of the Andhra Pradesh State and Subordinate Service Rules, 1996. Further, in the G.O. 3rd read above, an amendment was issued to the G.O 1st read above, to substitute, 'blindness or low vision (Open)' at roster point 6 and 'blindness or low vision (Women)' at roster point 106.

2. Subsequently, vide G.O. 4th read above, orders were issued for implementation of three percent (3%) reservation in promotions to the disabled employees. Accordingly, Government have issued necessary amendment to the Andhra Pradesh State & Subordinate Service Rules, 1996, vide G.O. 5th read above for providing three percent (3%) reservation in Promotions to the Differently Abled employees to all services of State Government where the cadre strength is more than five (5) against their roster points 6th, 31st & 56th prescribed under rule-22 of the Andhra Pradesh State and Subordinate Service Rules, 1996 in tune with the above orders.

3. Section 34 (1) of the Rights of Persons with Disabilities Act, 2016 reads that in "Every appropriate Government shall appoint in every Government establishment, not less than four per cent (4%) of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one percent (1%) each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one percent (1%) for persons with benchmark disabilities under clauses (d) and (e)".

4. The Director, Welfare of Differently Abled, Transgender & Senior Citizens,



in his letter dated 16-11-2018, has stated that as per Section 33 of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995, Government provided three percent reservations in favour of persons with disabilities. However, as per section 34 of the Rights of Persons with Disabilities Act, 2016, the four percent (4%) has to be provided and accordingly, the roster point for the category of Autism, Intellectual disability, Specific learning disability, Mental illness and Multiple disabilities to be fixed at 82 in the 100 cycle of vacancies. He has therefore, requested to issue necessary orders in the matter.

5. Accordingly, in consonance with the above provision of the section 34 (1) of the Rights of Persons with Disabilities Act, 2016 and a report of the Director, Welfare of Differently Abled, Transgender & Senior Citizens, Government have issued orders vide G.O.6th read above, for providing reservation in the appointments and in promotions in every Government establishment, not less than four percent (4%) of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one percent (1%) each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one percent 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.

6. (i) The Director, Welfare of Differently Abled, Transgender & Senior Citizens Andhra Pradesh in his further letter 7th read above has stated that the order of rotation specified in a unit of hundred vacancies as per Rule 22(e) of Andhra Pradesh State and Subordinate Service Rules has not been mentioned in the G.O.Ms.No.4, dated 09-02-2019, for providing four percent (4%) reservation to persons with disabilities in direct recruitment and in promotions. The categories, i.e., open and women have also not been indicated in the said G.O. to fill up 4 vacancies in a unit of hundred vacancies by the persons with disabilities, as was done earlier while issuing G.O.Ms.No.23 Women, Children, Differently Abled, Transgender & Senior Citizens (DW) Dept., dt.26.05.2011 and G.O.Ms.No.42, Dept. for Women, Children, Differently Abled, Transgender & Senior Citizens (DW), dt.19.10.2011 pertaining to provision of three percent (3%) reservation to persons with disabilities in direct recruitment and appointments by transfer on promotion. (ii) The roster point has also not been fixed and ratio for the 5 categories of persons with disabilities has also not been mentioned in the said G.O.Ms.No.4, dated 09-02-2019, for providing four percent (4%) reservation to persons with disabilities in direct recruitment and in promotions, as was done earlier while issuing comprehensive orders, vide G.O.Ms.No.23, WCD&SC



Dept.,dt.26-05-2011 and G.O.Ms.No.42, Dept. for WCD&SC (DW), dt.19.10.2011 for providing three percent (3%) reservation to persons with disabilities in direct recruitment and in promotions. He has therefore, requested to issue necessary orders in the matter.

7. Government, after careful examination of the matter and in consonance with the provision of the section 34(1) of the Rights of Persons with Disabilities Act, 2016 and in supersession of earlier orders issued in the G.Os 1st, 3rd, 4th and 6th read above, hereby issue the following Comprehensive Orders for providing four percent (4%) reservation in appointment and in promotion in every Government establishment in favour of benchmark disabilities as per section 34 of the Rights of Persons with Disabilities Act, 2016, duly indicating the categories i.e. Open / Women / Fixing the roster points, order of rotation and ratio for the five categories of the persons with disabilities, etc., as required under Rule – 22 [e] of Andhra Pradesh State and Subordinate Service Rules, 1996;

(i). four percent (4%) reservation shall be provided in the appointments and in promotions in every Government 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 percent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one percent for persons with benchmark disabilities under clauses (d) and (e) namely;

Roster Points in 100 point cycle	Persons with benchmark disabilities
6th point	(a) Blindness and Low vision
31st point	(b) Deaf and Hard of hearing
56th point	(c) Locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy
86th point	(d) Autism, Intellectual disability, Specific learning disability, 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 Government 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 reservation, as per the prescribed procedure at para [8] of this order.



(ii) Definitions of Disabilities: Definitions of categories of disabilities for the purpose of reservations in posts shall be as stipulated in the Rights of Persons with Disabilities Act, 2016.

I. Reservations in Direct Recruitment :-

(i) The reservations among the 4 categories of persons with Disabilities, Blindness and Low Vision, Deaf and Hard of Hearing, Locomotor Disability and Autism, Intellectual Disability, Specific Learning Disability, Mental illness and Multiple Disabilities in the cycles and reservation for women among them shall be as follows:-

1-100			
6 (Blindness and Low Vision) (Women)	31 (Deaf and Hard of Hearing) (Open)	56 (Locomotor Disability) (Open)	86 (Autism, Intellectual Disability, Specific Learning Disability, Mental illness and Multiple Disabilities. (Open)
101-200			
106 (Blindness and Low Vision) (Open)	131 (Deaf and Hard of Hearing) (Women)	156 (Locomotor Disability) (Open)	186 (Autism, Intellectual Disability, Specific Learning Disability, Mental illness and Multiple Disabilities) (Open)
201-300			
206 (Blindness and Low Vision) (Open)	231 (Deaf and Hard of Hearing) (Open)	256 (Locomotor Disability) (Women)	286 (Autism, Intellectual Disability, Specific Learning Disability, Mental illness and Multiple Disabilities) (Open)
301-400			



306 (Blindness and Low Vision)	331 (Deaf and Hard of Hearing)	356 (Locomotor Disability)	386 (Autism, Intellectual Disability, Specific Learning Disability, Mental illness and Multiple Disabilities)
(Open)	(Open)	(Open)	(Women)

(ii). 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 qualified women candidates are not available for the posts reserved for women, qualified male candidates of the same category of disabled may be appointed.

II. RESERVATIONS IN PROMOTIONS :-

(i) Reservation in promotion in favour of disabled employees is applicable to all services of State Government where the cadre strength is more than five (5);

(ii) The existing 100-point roster already prescribed under Rule 22 of the Andhra Pradesh State and Subordinate Service Rules by the State Government shall be followed in case of promotions also i.e. 6th, 31st, 56th and 86th;

(iii) Reservation in promotion in favour of disabled employees shall be applicable to those candidates who are fully qualified and eligible to hold the post as per existing Rules and Guidelines;

(iv) Reservation shall be implemented in favour of disabled employees in promotions to all the categories of posts in all State Government services except those exempted or may be exempted or as may be modified, as specified;

(a) If any department considers that it is not possible to provide reservation in promotions for any category of Persons with Disabilities, keeping in view the nature of duties to be performed by the employees in that particular department, the department may seek partial or full exemption from such reservation in promotions,



however such exemption or modification shall be decided by an Inter Departmental Committee as specified.

(b) Departments who wish to seek exemptions may do so within (90) days from the date of issue of these orders during which period the Rule of Reservation shall not apply to such departments for the posts identified by them for exemption. The orders issued by the Committee thereafter shall be final and further action taken accordingly.

(v) While preparing the panels of eligible candidates for promotion, the names of eligible disabled employees from the feeder category have to be shown against the roster points earmarked for them irrespective of their seniority position in the feeder category. However, if a disabled employee gets higher place in the eligible candidates list by virtue of their seniority in the feeder category he/she need not be adjusted in a lower position, which is earmarked for a disabled employee as per the roster system. Such roster point has to be filled up by moving up a disabled employee who is below in the seniority list in the feeder category. Filling up the roster points shall continue until the required percentage of disabled candidates is obtained. Once the required percentage is obtained by taking into account the candidate who are found in the list of the candidates fit for promotion on account of their seniority in the feeder category and those who are moved up to fill up the required roster point, further adjustment of disabled employees against the roster points has to be stopped. Unutilized roster points after the required disabled employee's percentage is met, shall lapse.

(vi) If required number of disabled employees are not available in the feeder category, the vacancies earmarked for disabled employees according to the roster will be carried forward as per orders issued from time to time as in case of Rule of reservation in promotion for SC/ST persons.

8. When any department considers that it is not possible to provide reservation for any category of Persons with Disabilities or that the extent of reservation needs to be reduced or that the extent of disability needs to be specified, keeping in view the nature of duties to be performed by the employees in that particular department, the department may seek partial or full exemption from such reservation. Such exemption shall however be decided by the following Inter Departmental Committee:-

- (i) Principal Secretary/Secretary to Government, : Chairman
Department for Women, Children,
Differently Abled and Senior Citizens
- (ii) The Director/Commissioner, Department : Member-
Convener for the Welfare of Differently Abled,
Transgender and Senior Citizens
- (iii) Principal Secretary/Secretary to Government,: Member
General Administration(Services) Department
- (iv) The Director, Public & Family Welfare : Member
- (v) Principal Secretary/Secretary to Government : Member or
his nominee of the department concerned



who sought exemption

9. The General Administration(Ser.D) Department, shall issue necessary amendments to the Andhra Pradesh State and Subordinate Service Rules, 1996, to that effect.

10. All the Departments of Secretariat, Head of Departments, all the District Collectors and all the authorities concerned in the State, shall take further necessary action accordingly, to implement the above orders.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA
PRADESH)

K.DAMAYANTHI
PRINCIPAL SECRETARY TO GOVERNMENT”

44. It is evident from G.O.Ms.No.2, dated 19.02.2020 that it provided for 4% reservation in every Government establishment in consonance with Section 34 (1) of the Act 2016, i.e., 1% each to be reserved for persons with benchmark disabilities under Clauses (a), (b), and (c) and 1% for persons with benchmark disabilities under Clauses (d) and (e) of Section 34(1) of the Act 2016.

45. It is further evident from G.O.Ms.No.2, dated 19.02.2020 that having regard to the type of work carried out in any Government establishment, it further provided that the Government may by notification and subject to such conditions, if any, as may be specified in the notification exempt any Government establishment from the provisions of such reservation, as per the prescribed procedure at para-8 of that G.O.Ms.No.2, dated 19.02.2020. In para-8 of the Government Order, *inter alia*, an 'Inter Departmental Committee' was constituted.



46. In exercise of power under Section 79 (1) of the Act 2016, the State Government issued G.O.Ms.No.6, Department for Women, Children, Differently Abled and Senior Citizens, dated 13.04.2020, which is reproduced as under:

“GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Rights of Persons with Disabilities Act, 2016 – Designation of the Director, WDA&SC as the State Commissioner for the persons with disabilities – Orders – Issued.

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DEPTT., FOR WOMEN, CHILDREN, DIFFERENTLY ABLED & SENIOR
CITIZENS(PROG.II)

G.O.MS.No. 6

Dated: 13-04-2020.

The Rights of Persons with Disabilities Act, 2016 (Central Act No. 49 of 2016).

&&&

ORDER:

The Government of India have enacted the Rights of Persons with Disabilities Act, 2016 which came into force from 19th day of April, 2017, repealing the Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995.

2. In exercise of the powers conferred under Sec. 79(1) of the Right of Persons with Disabilities Act, 2016, the Government of Andhra Pradesh hereby designate the Director, Welfare of Differently Abled & Senior Citizens as the State Commissioner for the persons with disabilities.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA
PRADESH)

K.DAMAYANTHI PRINCIPAL SECRETARY TO GOVT”

47. The impugned G.O.Ms.No.2, Animal, Husbandry, Dairy Development & Fisheries (AH-I) Department, dated 05.01.2021 is reproduced as under:

“GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

AHDD&F Department – Filling up the post of Veterinary Assistant Surgeon with persons with Loco-motor disability in place of persons with Blindness and Low Vision, Deaf and Hard of Hearing persons and Persons with Autism, Intellectual



Disability, Specific Learning Disability, Mental Illness and Multiple Disabilities, in the Department of Animal Husbandry – Orders – Issued.

ANIMAL HUSBANDRY, DAIRY DEVELOPMENT & FISHERIES (AH.I)
DEPARTMENT

G.O.MS.No. 2

Dated: 05-01-2021.

Read the following:-

1. G.O.Ms.No.54, Animal Husbandry, Dairy Development and Fisheries (AH.I) Department, Dated:06.06.1996.
2. G.O.Ms.No.02, Women, Children, Differently Abled and Senior Citizens(Prog.II) Department, Dated:19-02-2020.
3. From the Director, Animal Husbandry Department, Letter Roc.No.1548/BI/2019, Dated.22.04.2020.

** * **

ORDER:-

In the G.O. 2nd read above, orders were issued by the Government regarding provision of 4% reservation in appointment and in promotions in every Government establishments in favour of benchmark disabilities as per section 34 of the Rights of Persons with Disabilities Act, 2016.

2. The Director of Animal Husbandry, Andhra Pradesh, Vijayawada in the letter 3rd read above, among other things has stated that, the Animal Husbandry Department is purely Technical Department and the duties of the Veterinarians are dealt with treatment of ailing animals and conducting Vaccination programmes. It is not possible to provide Rule of Reservation for Visually and Hearing handicapped employees and Autism, Intellectual Disabilities, Specific learning disabilities, Mental illness and Multiple disability persons in Direct recruitment and in promotions. Further as per the Departmental Service Rules issued vide G.O. 1st read above "Under Rule 4 Reservation of appointment (a) The rule of Special representation (General rule 22) shall apply to appointment by direct recruitment to the post of Veterinary Assistant Surgeon. The Special representation in so far as it relates to physically handicapped persons shall apply to "ORTHOPEDEICALLY HANDICAPPED PERSONS" due to which the same observations were made in promotions also.

3. The Director of Animal Husbandry, Andhra Pradesh, Vijayawada has therefore requested to issue partial exemption in implementation of Rule of Reservation in accordance with the provisions contained in para No.7 (II) (iv) (a)(b) of the G.O. 2nd read above, with respect to the Visually and Hearing handicapped employees and Autism, Intellectual Disabilities, Specific learning disabilities, Mental illness and Multiple disability persons in Direct recruitment and in promotions in Animal Husbandry Department.

4. Government after careful examination of the matter hereby decided and accord permission to the Director, Animal Husbandry Department, to fill up the posts of Veterinary Assistant Surgeon with persons with Loco-motor disability in place of persons with Blindness and Low Vision, Deaf and Hard of Hearing persons and Persons with Autism, Intellectual Disability, Specific Learning Disability, Mental Illness and Multiple Disabilities, in the Department of Animal Husbandry.

5. The Director, Animal Husbandry Department, A.P. Vijayawada shall take necessary action accordingly.



6. This order issues with the concurrence of the Women, Children, Differently Abled and Senior Citizens (WCDA&SC) (Prog.II) Department vide U.O.No.WDC01/ 273/2020-PROG-II (Computer No.1166639), Dt:19.11.2020.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

POONAM MALAKONDAIAH
SPECIAL CHIEF SECRETARY TO GOVERNMENT
(FAC)”

48. From perusal of G.O.Ms.No.2, dated 05.01.2021, it is evident that the Government decided and accorded permission to the Director, Animal Husbandry Department to fill up the posts of Veterinary Assistant Surgeon with persons with Loco-motor disability, in place of persons with Blindness and Low Vision, Deaf and Hard of Hearing persons and Persons with Autism, Intellectual Disability, Specific Learning Disability, Mental Illness and Multiple Disabilities, in the Department of Animal Husbandry.

49. It is further evident that G.O.Ms.No.2, dated 05.01.2021 was issued with the concurrence of Women, Children, Differently Abled and Senior Citizens (WCDA&SC) (Prog.II) Department vide U.O.No.WDC01/273/2020-PROG-II (Computer No.1166639), dated 19.11.2020.

50. Thus, initially the State Government issued G.O.Ms.No.2, dated 19.02.2020 in consonance with Sub-Sec.(1) of Section 34 of the Act 2016, providing in supersession of earlier orders issued, 4% reservation in appointment and in promotion in every Government establishment in favour of benchmark disabilities indicating the categories i.e., open/women/fixing roster points, order of rotation and ratio for the five categories of the persons with



disabilities etc., as required under Rule 22 (e) of the Andhra Pradesh State and Subordinate Service Rules 1996. The same G.O.Ms.No.2, dated 19.02.2020 also provided 4% reservation in the appointments and in the promotions in every Government establishment 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 1% (one percent) each shall be reserved for persons with benchmark disabilities under Clauses (a), (b) and (c) and one percent for persons with benchmark disabilities under Clauses (d) and (e), with the provision that the Government 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 the reservation, as per the prescribed procedure at para-8 of G.O.Ms.No.2, dated 19.02.2020.

51. Para-8 of G.O.Ms.No.2 dated 19.02.2020 provided that when any department considers that it is not possible to provide reservation for any category of person with disabilities or that the extent of reservation needs to be reduced or that the extent of disability needs to be specified, keeping in view the nature of duties to be performed by the employees in that particular department, the department may seek partial or full exemption from such reservation. Such exemption shall however be decided by the inter-departmental committee constituted as follows:

- (i) Principal Secretary/Secretary to Chairman
Government, Department for Women,
Children, Differently Abled and Senior
Citizens



- (ii) The Director/Commissioner, Department for the Welfare of Differently Abled Transgender and Senior Citizens Member-Convener
- (iii) principal secretary/secretary to Member Government, General Administration (Services) Department
- (iv) The Director, Public & Family Welfare Member
- (v) Principal Secretary/Secretary to Member Government or his nominee of the department concerned who sought exemption

52. The Director, Animal Husbandry sent letter dated 22.04.2020 to the 1st respondent requesting the Government that it is not possible to provide Rule of Reservation for visually and hearing handicapped employees and Autism, intellectual disabilities, specific learning disabilities and required exemption in implementation of G.O.Ms.No.2, dated 19.02.2020, and as such requesting further the Special Chief Secretary to the Government that the proposal may be examined and forwarded to inter-departmental Committee for consideration to issue partial exemption in implementation of Rule of Reservation in G.O.Ms.No.2, dated 19.02.2020 with respect to Animal Husbandry Department for the posts of Veterinary Assistant Surgeons.

53. The inter-departmental committee on 19.11.2020 accorded permission to fill up the posts of Veterinary Assistant Surgeons with Loco-motor disability in place of persons with blindness and low vision, deaf and hard of hearing persons and persons with autism, intellectual disability, specific learning disability, mental illness and multiple disabilities, in the department of Animal Husbandry.



54. The Government of Andhra Pradesh issued G.O.Ms.No.2, dated 05.01.2021 and thereby according permission to the Director, Animal Husbandry to fill up the posts of Veterinary Assistant Surgeons with persons with Loco-motor disability in place of persons with blindness and low vision, deaf and hard of hearing persons and persons with autism, intellectual disability, specific learning disability, mental illness and multiple disabilities, in the department of Animal Husbandry.

55. What is evident from the aforesaid is that the exemption has been granted to the Government establishment of Animal Husbandry from applicability of Sub-sec.(1) of Section 34 of the Act 2016 i.e. confining the direct recruitment to the posts of Veterinary Assistant Surgeons in the Animal Husbandry Department, from the category of OH only of Persons with Disability (PWD) inasmuch as the said post shall be filled only by the category of OH. The reservation for all other categories, as also the provision for 1% each out of not less than 4% for other categories for the post of Assistant Veterinary Surgeon in Animal Husbandry has been exempted which post shall be filled by applying 4% reservation of persons with disability with the benchmark disability of Orthopedically Handicapped category.

56. The above exemption has been granted vide G.O.Ms.No.2 dated 05.01.2021 on the permission accorded by the inter-departmental committee as constituted in para-8 of G.O.Ms.No.2 dated 19.02.2020 as is evident from para-6 of G.O.Ms.No.2, dated 05.01.2021 which mentions that it was issued with the concurrence of the Women, Children, Differently Ables and Senior Citizens



(WCDA&SC) (Prog.II)) Department vide U.O.No.WDC01/273/2020-POROG-II (Computer No.1166639), Dt.19.11.2020.

57. The constitution of the inter-departmental committee, as quoted above, shows that the Director, Welfare of Differently Abled and Senior Citizens appointed as the State Commissioner for the person with disabilities under Section 79 of the Act 2016 is the Member-Convener, in the Inter-Departmental Committee.

58. Section 79 of the Act 2016 under Sub-Sec.(2) provides that a person shall not be qualified for appointment as the State Commissioner unless he has special knowledge or practical experience in respect of matters relating to rehabilitation. Sub-Sec.(4) also provides that the State Government shall determine the nature and categories of officers and other employees required to assist the State Commissioner in the discharge of his functions. Sub-Sec.(7) provides that the State Commissioner shall be assisted by an advisory committee comprising of not more than five members drawn from the experts in the disability sector in such manner as may be prescribed by the State Government.

59. There is no challenge to the appointment of the State Commissioner under Section 79 vide G.O.Ms.No.6, dated 13.04.2020. There is also no challenge to the G.O.Ms.No.2, dated 19.02.2020 under which the Inter-Departmental Committee has been constituted.



60. The impugned G.O.Ms.No.2, dated 05.01.2021, having been issued in exercise of the power conferred by Section 34 second proviso of the Act 2016, on the concurrence or permission accorded by the Inter-Departmental Committee, there is compliance with the statutory provisions.

61. The Inter-Departmental Committee constituted by the State Government is an expert body and when the State Government has acted upon the concurrence or permission accorded by an expert body constituted in terms of the Section 79 of the Act 2016, this Court in the exercise of writ jurisdiction, would not interfere with G.O.Ms.No.2, dated 05.01.2021.

62. In ***Medical Council of India v. KMCT Medical College***⁶ the Hon'ble Apex court observed that "a decision taken by the Union of India on the basis of a recommendation by an expert body regarding the inadequacy of facilities in medical colleges cannot be interfered with lightly".

63. Para-23 of ***Medical Council of India*** (supra) is reproduced as under:

“23. We do not deem it necessary to deal with the submission made on behalf of the College regarding the inspection not being properly conducted. **This Court has repeatedly said that a decision taken by the Union of India on the basis of a recommendation of an expert body regarding the**

⁶ (2018) 9 SCC 766



inadequacy of facilities in medical colleges cannot be interfered with lightly. Interference is permissible only when the colleges demonstrate jurisdictional errors, ex facie perversity or mala fide. [See: *Manohar Lal Sharma v. Medical Council of India* [*Manohar Lal Sharma v. Medical Council of India*, (2013) 10 SCC 60 : 6 SCEC 578] and *Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS)* [*Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS)*, (2016) 11 SCC 530 : 8 SCEC 176]]. As no case is made out by the College for interference with the inspection report, we decline the request of Mr Sibal for remand of the matter to the High Court.”

64. In ***Mahavir Institute of Medical Sciences v. Union of India***⁷ also it has been reiterated that unless there is a jurisdictional error or *ex facie* perversity in an inspection report, the Court will not interfere with the decision taken on the basis of recommendation of an expert body.

65. Any such jurisdictional error or *ex facie* perversity or *mala fide* has not been demonstrated before the Court.

66. The next submission of the learned counsel for the petitioners is that after the central legislation i.e., the Act 49 of 2016, the Special Rules of 1996 shall not apply in view of the later central legislation providing to the contrary under Section 34 i.e., 1% for the benchmark disability persons under clauses (a), (b), (c) and 1% in favour of the benchmark disability under clauses (d) and (e). The post of Veterinary Assistant Surgeons had to be filled as per Section 34 of the Act 2016, giving equal opportunity to the persons belonging to the

⁷ (2019) 14 SCC 794



other category of benchmark disability as well. The notification dated 24.09.2021 therefore cannot be confined to Orthopedically handicapped persons giving all the percentage of posts i.e., 4% to Orthopedically handicapped category persons. In his submission, the G.O.Ms.No.2, dated 05.01.2021 and the Notification dated 24.09.2021 cannot be sustained being contrary to Section 34(1) of the Act 2016.

67. The aforesaid submission deserves rejection, for the obvious reason that the second proviso to Section 34 (1) of the Act 49 of 2016 itself permits the appropriate Government, in the matters of the establishments of the State Government, to the State Government, to exempt such establishment from the provisions of Section 34 by notification in consultation with the State Commissioner for person with disabilities, having regard to the type of work carried out in such Government establishment. In exercise of that power conferred by the Act 49 of 2016, itself, the State Government, having regard to the type of work carried out in the Animal Husbandry Department, for the post of Veterinary Assistant Surgeons, vide G.O.Ms.No.2, dated 05.01.2021 granted exemption and decided to fill the said posts with persons with Loco-motor disability (orthopedically handicapped) only. The earlier G.O.Ms.No.2, dated 19.02.2020 was issued under Sub-Sec.(1) of Section 34 enhancing the percentage from not less than 3% to not less than 4% as per Section 34 (1) and the next G.O.Ms.No.2, dated 05.01.2021 was issued in exercise of powers conferred on the State Government *inter alia*, including under the second proviso to Section 34(1) of the Act 2016. The said Government Order was



issued with concurrence of the Women, Children, Differently Abled and Senior Citizens (WCDA&SC) (Prog.II) Department vide U.O.No.WDC01/273/2020-PROG-II (Computer No.1166639), dated 19.11.2020.

68. In ***Perambaduru Murali Krishna*** (supra) case has been relied upon by the petitioners' counsel to contend that in case of conflict between the central Act and the Rules framed by the State, the Central Act shall prevail. His submission is that Section 34 (1) of the Act 2016 provides for equal opportunity to all the persons suffering from any kind of benchmark disability under clauses (a) to (d) in the ratio of 1% each out of not less than 4% in total and therefore, G.O.Ms.No.2, dated 05.01.2021 being contrary to such provision under Sub-Sec.(1) of Section 34, violates Section 34 of the Act 2016.

69. The aforesaid submission of Sri M. Pitchaiah is misconceived. In the present case G.O.Ms.No.2, dated 05.01.2021 has been issued by the appropriate Government complying with the conditions of second proviso of Section 34 (1) itself, such power has been conferred by the Central Legislation itself and once the source of power is Act 2016 itself and exemption has been granted under the second proviso by complying with the conditions thereunder, it cannot be said that since the Government Order has been issued by the State Government and therefore, it shall not apply in view of the Central Legislation. The power exercised by the State Government by issuing G.O.Ms.No.2, dated 05.01.2021 is the power conferred by the Central Legislation itself. Consequently, the judgment in the case of ***Perambaduru Murali Krishna*** (supra) is of no help to the petitioners.



70. In ***Perambaduru Murali Krishna*** (supra) the question was of inconsistency between Section 34 of Act 1996 on one hand and the General Rules i.e., A.P.State and Subordinate Service Rules, 1996 on the other. Naturally, the Act 1996 was the Central Legislation and the General Rules were made by the State in the exercise of power under Article 309 of the Constitution of India. Section 33 of Act 1996 provided for not less than 3% of reservation in favour of physically handicapped persons and out of those, not less than 1% each for the categories under clauses (i), (ii) and (iii). The General Rules 1996 though provided for 3% of the reservation in favour of the physically handicapped persons, but did not provide for at least 1% each in favour of categories under clauses (i), (ii) and (iii) of Section 33 of Act 1996. This Court found that to that extent the State Law was contrary to the Central Legislation and the notification issued in that case providing reservation of 3% in favour of physically handicapped persons, but without providing for 1% reservation in terms of Section 33 of Act 1996 for each category was held to be void, being clearly inconsistent to Section 33 of the Act 1996. The present is a case different from the case of ***Perambaduru Murali Krishna*** (supra). Here G.O.Ms.No.2, dated 05.01.2021 was issued in exercise of powers under the second proviso to Section 34 of Act 2016 which enables the Government to grant exemption, therefore, granting exemption vide Government Order dated 05.01.2021 in terms of the second proviso to Section 34 of the Act 2016 cannot be said to be in any way contrary to or inconsistent with Section 34 of the Act 2016.



71. In **Dr. M. Reddi Bhaskar Reddy** (supra) upon which also learned counsel for the petitioners placed reliance, the change in law and the increase of reservation from 3% to 4% by the new Act, which holds the field, had not been taken into account while issuing G.O.Ms.No.99, dated 04.03.2013 providing for 3% reservation in terms of the earlier Act of 1996. This Court held that the mandate of Section 34 of the Act 2016 requires the State of Andhra Pradesh to create horizontal reservation of 4% in accordance with the provisions of Section 34 of the Act 2016 and that would require the State to enhance the reservation provided for persons with disabilities from 3% to 4%. Learned counsel for the petitioners laid emphasis in para-60, Direction No.6 therein, to contend that in the said judgment the direction has been given to the State of Andhra Pradesh and the Universities to provide reservation for persons with disabilities in terms of Section 34 of the Act 2016 before undertaking any new recruitment. Based thereon, the learned counsel for the petitioners further submitted that in view of Section 34 of the Act 2016 not less than 4% is provided to physically handicapped persons and 1% each for the categories under clauses (a), (b) and (c) respectively and 1% each for the categories (d) and (e) and in view of the said judgment, the notification impugned in the present petitions dated 24.09.2021 cannot be sustained.

72. **Dr.M. Reddi Bhaskar Reddy** (supra) do not relate to the second proviso of Section 34 of Act 2016 and that was not a case of grant of exemption from the provisions of Section 34 to any department or establishment of the Government. Consequently, the said judgment in **Dr.M.**



Reddi Bhaskar Reddy (supra) cannot be applied to the facts of the present case. The only law in that judgment to this effect that the State of Andhra Pradesh has to provide not less than 4% reservation for persons with disabilities in terms of Section 34, before undertaking any new recruitment, is to be considered only to this extent that the reservation in favour of physically handicapped persons cannot be less than 4%. But when coming to the applicability of 4% reservation to a department or establishment, which has been granted exemption, such reservation to the categories of benchmark disability is to be considered keeping in view the notification issued under the second proviso of Section 34 of Act 2016. The petitioner cannot derive any benefit from the judgment of **Dr.M. Reddi Bhaskar Reddy** (supra).

73. Learned counsel for the petitioners further placed reliance in the case of **Leesamma Joseph** (supra) in which the point in issue was as to whether Section 33 of the Act 1996 which provided for reservation of not less than 3% for persons or class of persons with disabilities, provided for reservation in promotion. In that case, the Administrative Tribunal observed that Section 33 only provided for reservation not less than 3% for persons of class of disabilities but did not provide for reservation in promotion. The Tribunal further observed that Section 32 mandating identification of posts and the Government Order issued thereunder, limited the reservation only in matters of direct recruitment through the Public Service Commission, the promotion aspect was not provided for. The Kerala High Court has set aside the judgment of the Tribunal and has held that the reservation would be applicable even in promotion. The Hon'ble



Apex Court held that the view taken by the High Court was correct and did not call for any interference. The percentage of reservation provided under Section 33 would be applicable even in promotion. The 1995 Act does not make a distinction between a person who may have entered service on account of disability and a person who may have acquired disability after having entered the service. The mode of entry in service cannot be a ground to make out a case of discriminatory promotion. The direction was issued to the State of Kerala to implement the judgments and provide for reservation in promotion in all posts identified for the said posts. The aforesaid judgment in **Leesamma Joseph** (supra) is also of no help to the petitioners as the present is not a case for applying or not applying the reservation of 4% in promotion.

74. Sri Aswartha Narayana, learned GP, placed reliance in the case of **R.S.Raghunath** (supra) to contend that the special law prevails over general law and the rules of 1996 being the special law shall prevail over the general law and laid emphasis in para-29, which is being reproduced as under:

“29. It is stated therein that for the general principle that the special law prevails over general law there is one exception and that is a later general law prevails over earlier special law if it clearly indicates the intention to supersede the special law. The non-obstante clause introduced by amending Rule 3 of the General Rules by adding Rule 3(2) which was enacted after the Special Rules indicates the clear intention to supersede the Special Law to the extent that for the posts which are not Heads of the Departments or Additional Heads of Departments the promotion, if provided for by way of selection, would be on the basis of seniority-cum-merit and not on the basis of merit only.”



75. It is settled principle that the special law prevails over general law, but there is one exception and that is that later general law prevails over earlier special law if it clearly indicates the intention to supersede the special law.

76. In ***U.P.State Electricity Board*** (supra) the Hon'ble Apex Court held that the general provision shall yield to a specific provision. The reason for the rule is that in passing of Special Act, the Parliament devotes its entire consideration to a particular subject. When a Genral Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former Special Act unless it appears that the Special Act again received consideration from Parliament.

77. The present is not a case of the repeal of the Act No.1 of 1996, but a case of repeal and reenactment on the same subject in view of the Statement of Objects and Reasons of the Act 2016.

78. Section 102 of the Act 2016, repealed the Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996) and sub-sec.(2) provided that notwithstanding the repeal of the said Act i.e., Act 1 of 1996, anything done or any action taken under the said Act, shall be deemed to have been done or taken under the corresponding provisions of the Act, 2016.

79. Section 102 of the Act 2016 provides as under:



“102. Repeal and savings:- (1) The Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995 (1 of 1996) is hereby repealed.

(2) Notwithstanding the repeal of the said Act, anything done or any action taken under the said Act, shall be deemed to have been done or taken under the corresponding provisions of this Act.”

80. The corresponding provision to Section 33 proviso of Act 1996 is Section 34 (1) second proviso of the Act 2016.

81. The proviso to Section 33 of the Act 1996 conferred the powers on the appropriate Government, the State Government herein, having regard to the type of work carried on in any of its establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of Section 33. The post of Veterinary Assistant Surgeons in the Animal Husbandry Department of Andhra Pradesh was exempted from the provisions of Section 33 of the Act 1996 to that extent i.e., 3% reservation in favour of physically handicapped persons for the said post shall apply only to the persons suffering with benchmark disability of loco motor i.e., orthopedically handicapped, by making Special Rules 1996, in Section 4 (a) thereof.

82. When compared to the new Section 34 of the reenacted Act 2016, the second proviso provides for the same as was provided by the proviso to Section 33 of the Act 1996 except with the change that now the State Government is required to make consultation with the State Commissioner for persons with disabilities, to be appointed under Section 79 of the reenacted Act



2016. So far as the power of the appropriate government to exempt any of its establishment from the provisions of the Section 33 under the old Act or Section 34 of the reenacted Act is concerned, the same was and is to be exercised having regard to the type of work carried on in any department or establishment. So, the grant of exemption is dependent upon type of work carried on in any department or establishment if that type or nature of work requires such exemption. The power to grant exemption under both the Act is with the State Government, in the matters of the State establishment. The consideration upon which the exemption is or is not to be granted remains the same, "having regard to the type of work carried on in any department or establishment" and in those respect there is no change in the Act 2016 from Act 1996.

83. The Parliament is conscious of its legislation. In spite of the change in the second proviso to Section 34 of the Act 2016 from proviso to Section 33, to the extent of consultation with the State Commissioner, it provided under Section 102(2) of the Act 2016 that notwithstanding the repeal of Act 1996 anything done or taken under the said Act, shall be deemed to have been done under the corresponding provision of the Act 2016.

84. At this stage, it is apt to reproduce Section 24 of the Central General Clauses Act, 1897 as under:

“Section 24. Continuation of orders, etc., issued under enactments repealed and re-enacted.—Where any [Central Act] or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any [appointment



notification,] order, scheme, rule, form or bye-law, [made or] issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been [made or] issued under the provisions so re-enacted, unless and until it is superseded by any [appointment notification,] order, scheme, rule, form or bye-law, [made or] issued under the provisions so re-enacted [and when any [Central Act] or Regulation, which, by a notification under section 5 or 5A of the 8 Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section].”

85. In ***State of Punjab v. Harnek Singh***⁸ during subsistence of the Prevention of Corruption Act, 1947, the Government of Punjab issued a notification on 09.07.1968 authorising Inspectors of Police, for the time being serving in the State Vigilance Department or who may be posted in future to serve with the said agency to investigate the offences under the 1947 Act within the State of Punjab so long as they remain posted in the said agency. In supersession of the notifications dated 09.07.1968 the Government of Punjab issued another notification on 12.08.1968 under Section 5-A (1) of the 1947 Act authorizing such Inspectors of police to investigate the offences under the Act even beyond the State of Punjab and the restriction of investigation within the State of Punjab was removed. The 1947 Act was repealed on 09.09.1988 by reenacting the 1988 Act as Act 49 of 1988. The FIRs against the respondents therein were registered after coming into force of the 1988 Act and the

⁸ (2002) 3 SCC 481



investigation was conducted by the Inspectors of Police who had been authorized to investigate the offences by notifications issued under the repealed Act of 1947. The challenge made was by the accused/respondents for quashing the FIRs and the criminal proceedings against them on the ground that the Inspectors who had investigated the cases were not the authorized officers in terms of Section 17 of the 1988 Act. In other words, the challenge was that the authority of those Inspectors was by way of the notifications issued under the Repeal Act and in view of the new Act 1988 they have no such authority which was issued under the repeal Act.

86. In ***Harnek Singh*** (supra) the questions of law to be adjudicated upon in those appeals as framed by the Hon'ble Apex Court, were as under:

“(1) Whether the notifications issued by the State Government in exercise of the powers conferred upon it under Section 5-A(1) of the Prevention of Corruption Act, 1947 (since repealed) empowering and authorising the Inspector of Police to investigate the cases registered under the said Act are not saved under the saving provisions of the re-enacted Prevention of Corruption Act, 1988.

(2) Whether the aforesaid notifications not being inconsistent with the provisions of the re-enacted Act continue to be in force and be deemed to have been issued under the Prevention of Corruption Act, 1988 till the aforesaid notifications are superseded or specifically withdrawn.”

87. The Hon'ble Apex Court held that Section 24 of the General clauses Act deals with the effect of repeal and reenactment of an Act and the object of the section is to preserve the continuity of the notifications, orders, schemes, rules and bye-laws made or issued under the repealed Act unless they are



shown to be inconsistent with the provisions of the reenacted statute. The Hon'ble Apex Court held that there is no dispute that when an Act is repealed but reenacted, it is almost inevitable that there will be some time lag between the reenacted statute coming into force and regulations being framed under the reenacted statute. The Hon'ble Apex Court referred to its earlier judgment in *Chief Inspector of Mines v. Karam Chand Thapar*⁹ in which it was observed that however efficient the rule-making authority may be it is impossible to avoid some hiatus between the coming into force of the reenacted statute and the simultaneous repeal of the old Act and the making of regulations. Often, the time lag would be considerable.

88. It is apt to refer paragraphs-19, 20, 21 and 24 in ***Harnek Singh*** (supra) as under:

“19. In *Central Bureau of Investigation v. Subodh Kumar Dutta* [(1997) 10 SCC 567 : 1997 SCC (Cri) 876] the cognizance of the offence had been taken by the Special Court constituted under the West Bengal Special Courts Act. After cognizance had been taken, the Prevention of Corruption Act, 1947 came to be repealed by the Prevention of Corruption Act, 1988 w.e.f. 9-9-1988. The accused filed a criminal revision petition in the High Court seeking quashing of the proceedings in the case pending against him before the Special Court in which the principal ground raised was the violation of fundamental right of the accused to speedy trial. During the arguments the accused was permitted to raise a plea that the Special Court, trying the bribery case, had no jurisdiction to take cognizance of the offence under the Prevention of Corruption Act, 1947 as that court had not been constituted pursuant to Section 3 of the Prevention of Corruption Act, 1988 which had repealed the 1947 Act. Taking note of Section 26 of the 1988 Act, the Single Judge of the High Court

⁹ AIR 1961 SC 838



opined that the cognizance taken by the Special Court on 9-7-1988 under the 1947 Act was not saved and thus quashed the proceedings. Interpreting sub-section (2) of Section 30 of the 1988 Act, this Court held that a bare look at the provisions of sub-section (2) of Section 30 shows that anything done or any action taken or purported to have been taken under or in pursuance of the Prevention of Corruption Act, 1947 shall be deemed to have been taken under or in pursuance of the corresponding provision of the Prevention of Corruption Act, 1988. In view of this specific provision, the cognizance of the offence taken by the Special Court stood saved.

20. In *Nar Bahadur Bhandari v. State of Sikkim* [(1998) 5 SCC 39 : 1998 SCC (Cri) 1252] it was held that sub-section (2) of Section 30 of the 1988 Act, on the one hand ensures that the application of Section 6 of the General Clauses Act is not prejudiced, on the other it expressed a different intention as contemplated by the said section. The last part of the sub-section introduced a legal fiction whereby anything done or action taken under or in pursuance of the 1947 Act shall be deemed to have been done or taken under or in pursuance of the corresponding provision of the 1988 Act. The fiction is to the effect that the 1988 Act had come into force when such thing was done or action was taken.

21. In *Kolhapur Canesugar Works Ltd. v. Union of India* [(2000) 2 SCC 536] this Court held that at common law the normal act of repealing the statute or deleting the provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into, it cannot be granted afterwards. Savings of the nature contained in Section 6 in the Special Act may modify the position.”

“**24.** There is no substance in the arguments of the learned counsel appearing for the respondents that the provisions made in the two enactments were inconsistent and sub-section (2) of Section 30 would not save the notifications issued under the 1947 Act. The consistency, referred to in sub-



section (2) of Section 30 is with respect to acts done in pursuance of the repealed Act and thus restricted it to such provisions of the Acts which come for interpretation of the court and not the whole of the scheme of the enactment. It has been conceded before us that there is no inconsistency between Section 5-A of the 1947 Act and Section 17 of the 1988 Act and provisions of the General Clauses Act would be applicable and with the aid of sub-section (2) of Section 30 anything done or any action taken or purported to have been done or taken in pursuance of the 1947 Act be deemed to have been done or taken under or in pursuance of the corresponding provision of the 1988 Act. For that purpose, the 1988 Act, by fiction, shall be deemed to have been in force at the time when the aforesaid notifications were issued under the then prevalent corresponding law. Otherwise also there does not appear any inconsistency between the two enactments except that the scope and field covered by the 1988 Act has been widened and enlarged. Both the enactments deal with the same subject-matter i.e. corruption amongst the public servants and make provision to deal with such a menace.”

89. In ***Harnek Singh*** (supra) the Hon’ble Apex Court held that with the aid of sub-Sec.(2) of Section 30 of the Act 1988 anything done or any action taken or purported to have been done or taken in pursuance of the 1947 Act be deemed to have been done or taken in pursuance of the corresponding provision of the 1988 Act. For that purpose, the 1988 Act, by fiction, shall be deemed to have been in force at the time when the notifications were issued under the then prevalent corresponding law. In the said case, both the enactments dealt with the same subject matter i.e., corruption against the public servant and made provision to deal with such menace.

90. The Hon’ble Apex Court in ***Harnek Singh*** (supra) further held that the notifications issued by the Government of Punjab in exercise of the powers



conferred under Section 5-A of the 1947 Act were saved under the saving provision of the reenacted Act 1988, such notifications were not inconsistent with the provisions of the reenacted Act 1988 and are deemed to continue in force as having been issued under the reenacted Act 1988 till those notifications are specifically superseded or withdrawn or modified under the Act 1988.

91. In the present case, this Court finds that both the enactments i.e., the Act 1996 and the Act 2016 dealt with the same subject matter i.e., to give effect to the United Nations convention on the rights of persons with disabilities and for the matters effected therewith or incidental thereto for empowerment of persons with disabilities. The Court also does not find any inconsistency between section 33, proviso of the Act 1996 and the second proviso to Section 34 of the Act 2016, inasmuch as the criteria to grant exemption is the same i.e., having regard to the type of work carried on in any department or establishment of the Government and the competent authority to grant such exemption is the same i.e., the State Government. The only change in the second proviso to Section 34 of the Act 2016 requiring consultation with the State Commissioner for the persons with disabilities, in the second proviso, the legislature was conscious but in Section 102 (2) it did not provide for an embargo of "so far as it is not consistent with the provisions reenacted", as is provided in Section 24 of the General Clauses Act. Therefore, such change, the legislature cannot be imputed to have considered as inconsistent in Sec.34 second proviso *qua* Sec.33 'proviso' for the purpose of applicability of Sec.102



(2) to the Special Rules 1996 as not to be deemed to have been passed under the corresponding Section 34 second proviso of the Act 2016.

92. It could not be the intention of the legislature while repealing the Act 1996 and reenacting the Act 2016 that in the hiatus between the repeal of the Act 1996 and issuance of notification under second proviso to Section 34 of Act 2016 in State of Andhra Pradesh in Animal Husbandry Department on the post of Veterinary Assistant Surgeons the reservation of persons with disabilities shall apply as per Section 34 (1) in favour of all the categories of benchmark disabilities without having regard to nature of work being carried on, in that government establishment which required exemption and was actually granted by Special Rules 1996 framed in exercise of power conferred by Section 33 of Act 1996 on the same criteria of 'the nature of the work' and by the "same appropriate Government".

93. So it cannot be said that even during the interregnum period there were no rules governing the appointment to the post of Veterinary Assistant Surgeons in Animal Husbandry Department carrying on reservation to physically handicapped persons only in favour of Orthopedically Handicapped category.

94. From the aforesaid legal provisions, it is evident that since 1996, under the A.P. Animal Husbandry Service Rules, 1996, on the post of Veterinary Assistant Surgeons, there is reservation in favour of physically handicapped persons to the extent provided under the Act, but in favour of only



orthopedically handicapped persons, i.e., the persons suffering from benchmark disability of Orthopedically Handicapped (OH).

95. Even if the argument of Sri M. Pitchaiah is accepted that those Special Rules 1996, to the aforesaid extent of providing reservation only in favour of Orthopedically Handicapped category physically handicapped to the post of Veterinary Assistant Surgeons could not apply, as they became contrary to the Act of 2016, with effect from 27.12.2016, in view of sub-Sec.(1) of Section 34 of Act 2016 which specifically provided for at least 1% each reservation in favour of the persons suffering from benchmark disabilities as mentioned therein, and as such during the period i.e., from 27.12.2016 and up to issuance of G.O.Ms.No.2, dated 05.01.2021, the post of Veterinary Assistant Surgeons in Animal Husbandry Department cannot be taken to have been exempted, under the second proviso to Section 34 (1) of the Act 2016 from applicability of Section 34 of Act 2016, the said submission would still be of no help to the petitioners because in the present writ petitions it is the validity of G.O.Ms.No.2, dated 05.01.2021 and the Notification dated 24.09.2021 issued for appointment on the post of Veterinary Assistant Surgeons pursuant to the G.O.Ms.No.2, dated 05.01.2021 is questioned. What was done during the interregnum period i.e., from coming into force of Act 2016 on 27.12.2016 up to issuance of G.O.Ms.No.2, dated 05.01.2021 is not the subject matter of the present writ petitions.

96. It cannot be said that by making reservation only in favour of Orthopedically handicapped category of persons and granting exemption of



reservation in favour of other categories of persons having benchmark disabilities any discrimination has been made between the persons suffering from orthopedically handicapped category on one hand and other than the orthopedically handicapped category on the other hand. Section 34 of the Act 2016 itself provides for criteria for grant of exemption i.e., having regard to the type of work carried out in any Government establishment and therefore the Act 2016 itself provides for such classification based on nature of work which can be performed by the persons suffering from one kind of disability but cannot be performed effectively by the persons suffering from other kind of disability. Such a classification based on 'nature of work' could not be argued to be not a reasonable classification.

97. Besides, in the present writ petitions there is no challenge to vires of Section 34 (1) second proviso of the Act 2016.

98. With respect to the submission of Sri M. Pitchaiah that the petitioners have studied B.V.Sc and A.H under VH category and also underwent internship and after having been granted practical training they are entitled to practice as Assistant Veterinary Surgeon in the State of Andhra Pradesh, is concerned, the petitioners may be entitled to practice as Veterinary Assistant Surgeon but when it comes to the post of Veterinary Assistant Surgeon in the Animal Husbandry Department of the State Government, which is confined only to a particular category of disability persons, contrary to those legal provisions, the petitioners cannot claim entitlement in such department, as they belong to



different category of disability, which category, as a class is exempted for such post in Animal Husbandry Department.

99. In view of the aforesaid, this Court is of the considered view that G.O.Ms.No.2, dated 05.01.2021 and notification dated 24.09.2021 are neither without jurisdiction nor suffer from any violation of Section 34 of the Act 2016 or Article 14 of the Constitution of India.

100. In the result, all these three writ petitions lack merit and are accordingly dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

Date: 21.10.2022
Dsr

Note:
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