REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.2281-2282 OF 2010
(Arising out of SLP(C)Nos.10669-70 of 2008)

Syed Bashir-ud-din Qadri .. Appellant

Vs.

Nazir Ahmed Shah & Ors. .. Respondents

J U D G M E N T

ALTAMAS KABIR, J.

1. Leave granted.

2. The appellant is a person suffering from cerebral palsy and these appeals are the story of his struggle to make himself self-dependent and to find an identity for himself against enormous odds. Despite his handicaps, the appellant completed his

graduation under the University of Kashmir and was awarded a B.Sc. degree by the University on 28th February, 2004.

3. On 28th April, 2004, the State of Jammu & Kashmir launched a scheme known as "Rehbar-e-Taleem" which literally translated means a "Teaching Guide". Under the Scheme, a Village Level Committee was constituted to select persons to be appointed as "Rehbar-e-Taleem" who would be deemed to be community workers for a period of five years on a monthly honorarium after which they would be considered for regularisation as General Line Teachers in the Education Department. The said stipulation came with the rider that in the event the teacher was unable to fulfil the age qualification, his employment would be on contractual basis for the future.

4. The appellant also applied for appointment as Rehbar-e-Taleem and in January, 2005, a merit list

of four candidates was prepared by the Zonal Education Officer, Awantipora, for filling up three vacancies in the post of Rehbar-e-Taleem in the newly upgraded Kanjinag School under the Sarva Shiksha Abhiyan. On 16th February, 2005, the Chief Education Officer, Pulwama, published the list of the three proposed candidates for appointment as Rehbar-e-Taleem, in which the appellant was placed in the first position, inviting objections with regard to the list published along with documentary proof. Pursuant thereto, the Respondent No.1 herein, Nazir Ahmad Shah, sent a letter to the Director of School Education, Srinagar, objecting to the appellant's selection on the ground that being physically handicapped he was not fit for being appointed as Rehbar-e-Taleem.

5. As the respondents were not issuing an appointment letter to the appellant, he filed a Writ Petition, being SWP No.363 of 2005, before the

Jammu and Kashmir High Court in Srinagar on 25th April, 2005, for a Writ in the nature of Mandamus to command the respondents therein to issue appointment letter in his favour in terms of the list issued by them.

6. During the pendency of the writ petition the Jammu and Kashmir Government issued a Gazette Notification on 21st October, 2005, providing for 3% reservation for appointment by direct recruitment for physically challenged candidates. In the said Notification it was particularly indicated that reservations in recruitment would be available for physically challenged persons for services and posts specified under Section 22 of the Jammu and Kashmir Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998 (hereinafter referred to as "the 1998 Act"). Section 22 of the said Act, which deals with reservation of posts, provides

that the Government shall appoint in every establishment such percentage of vacancies, not less than 3%, for persons or class of persons with disabilities and suffering from :

(i) blindness or low vision – 1%;
(ii) hearing impairment – 1%;
(iii) locomotor disability or cerebral palsy, in the posts identified for each disability – 1%.

7. The writ petition filed by the appellant was heard and disposed of on 31st August, 2006, with a direction that candidates should be appointed only after they were found physically fit for the job and that the concerned respondent should consider the possibility of absorbing the appellant under the quota of handicapped persons. Pursuant to the orders of the High Court, on 15th September, 2006, the Director of School Education, Kashmir, constituted a committee comprising of the Joint Director (EE), Personnel Officer, DSEK and Chief Education Officer, Srinagar, to enquire into the

appellant's claim for appointment as Rehbar-e-Taleem. The said Committee submitted its report on 13th November, 2006, certifying that the appellant was found reading and talking well and able to teach, but his problem was that he could not write. On an overall assessment and with particular regard to the State's policy on rehabilitation of the physically handicapped, the Committee was of the view that the appellant be given a chance and that his appointment as Rehbar-e-Taleem could also restore his self-esteem. On receipt of the said report, the Director of School Education, Kashmir, directed the Chief Education Officer, Pulwama, to issue a letter to the appellant engaging him as Rehbar-e-Taleem in Middle School, Kanjinag. Such order of engagement was issued to the appellant by the Chief Education Officer, Pulwama, on 25th November, 2006. The said order of the Chief Education Officer, Pulwama, was followed by Order No.147-ZEO of 2006 issued by the Zonal Education

Officer, Awantipora, on 27th November, 2006 for engaging the appellant as Rehbar-e-Taleem in UPS, Kanjinag. On receipt of the letter of engagement, the appellant joined UPS, Kanjinag, and submitted his joining report to the Head Master of the school.

8. On 1st February, 2007, Mr. Nazir Ahmed Shah, the candidate who was placed in the 4th position in the merit list, filed SWP No.103/2007 before the Jammu and Kashmir High Court at Srinagar praying for quashing of the report of the Committee and to cancel the order of the Director of School Education, Kashmir, appointing the appellant as Rehbar-e-Taleem in UPS, Kanjinag, and prayed that he be appointed as Rehbar-e-Taleem in place of the appellant.

9. On the orders of the Jammu and Kashmir High Court, the appellant was examined by the Head of the Department of Neurology in the Sher-e-Kashmir

Institute of Medical Sciences (SKIMS), Soura, Srinagar, and in his report, the Head of the Department of Neurology indicated that the appellant was suffering from cerebral palsy with significant speech and writing difficulties, which would make it difficult for him to perform his duties as a teacher.

10. On the basis of such report, the Director of School Education, Kashmir on 17th July, 2007, constituted a Committee to examine the working of the appellant in the school. The said Committee made an on-the-spot assessment on 17th July, 2007, and expressed the view that the appellant was well-versed with the subject he taught and did justice with his teaching prowess. On 7th September, 2007, the Jammu and Kashmir High Court disposed of the writ petition fled by Nazir Ahmed Shah by quashing the appellant's appointment and directed the Director of School Education, Kashmir, to identify

a suitable job where the appellant could be accommodated to enable him to earn a suitable living.

11. Aggrieved by the said order of the learned Single Judge, the appellant filed L.P.A. No.204/2007 on 22nd October, 2007. During the pendency of the Letters Patent Appeal on 8th November, 2007, the Head Master, Government Middle School, Kanjinag, issued a letter indicating that the appellant had satisfactorily completed one year in the school. However, soon thereafter, on 21st November, 2007, the High Court dismissed the appellant's Letters Patent Appeal. In terms of the order passed by the Division Bench of the High Court, the Director of School Education, Kashmir, directed the Chief Education Officer, Pulwama, to identify the post of Library Bearer and to submit a report to the High Court. Upon identification of such posts for the appellant by the Chief Education

Officer, Pulwama, the Director of School Education, Kashmir directed the Chief Education Officer, Pulwama, to implement the order of the High Court passed in SWP No.103/2007. In response to the above, on 3rd January, 2008, the Director of School Education, Kashmir, informed the High Court that two posts of Library Bearer and two posts of Laboratory Assistant were vacant, against which the appellant could be considered. Soon thereafter, on 19th January, 2008, the Chief Education Officer, Pulwama, issued an order disengaging the appellant from the post of Rehbar-e-Taleem.

12. Aggrieved by the order of the learned Single Judge in the writ petition filed by Nazir Ahmad Shah (SWP No.103 of 2007), resulting in the passing of the order of his disengagement from the post of Rehbar-e-Taleem, the appellant preferred the Special Leave Petition (now Appeal) basically on the ground that the same was contrary to the

provisions of Section 22 of the 1998 Act whereunder it has been provided that the Government shall appoint in every establishment such percentage of vacancies not less than 3% for persons or class of persons with disabilities among which locomotor disability or cerebral palsy was also identified.

13. Appearing in support of the Appeal, Mr. Colin Gonsalves, learned Senior Advocate, submitted that once the State Government with the help of an expert Committee identifies teaching posts to be suitable for appointment of candidates suffering from cerebral palsy in terms of section 21 of the 1998 Act, then it would not be open for someone to contend that a person suffering from cerebral palsy, who is unable to write and whose speech is somewhat slurred, should be disqualified from teaching. Mr. Gonsalves submitted that the main characteristic of a person suffering from cerebral palsy is his inability to write and speak in a

fluent manner. Despite such handicap, the Legislature thought it fit to accommodate 1% of the vacancies available for appointment of a person suffering from the said disease. Mr. Golsalves urged that by holding the disabilities, which constitute the effects of cerebral palsy, against the appellant, the respondents were negating the very object of Section 22 of the 1998 Act.

14. Mr. Gonsalves also urged that without challenging the provisions of Section 22 of the 1998 Act, which provided for reservation of 1% of the vacancies for persons suffering from cerebral palsy and the subsequent Notification issued in pursuance thereof, it was not open to the respondents to question the appellant's appointment as Rehbar-e-Taleem. Mr. Gonsalves submitted that the provisions of Section 22 of the 1998 Act not having been challenged, any challenge to the appointment of a person with such a medical

disability would not be sustainable. Mr. Gonsalves submitted that apart from the above, it would also have to be shown that the person appointed was completely incapable of imparting education because of his disablements and that retaining him in the teaching post would prejudice the students. Mr. Gonsalves pointed out that, on the other hand, the Joint Director and the Chief Education Officer, Srinagar, assessed the appellant's ability to teach and noticing that he was unable to write, still felt that he should be given a chance and that his appointment as Rehbar-e-Taleem would help restore a sense of self-esteem in him. In this case, the Block Medical Officer, Tral, also issued a certificate in favour of the appellant on 14.3.2007, in which the words "clinically he is fit for any Govt. job" have been mentioned. Of course, the genuineness of the said certificate has been questioned by the respondent and it has been submitted on the basis of a supporting letter from

the Block Medical Officer, Tral, that the aforesaid phrase had not been written by him but had been inserted later into the certificate after the same had been issued.

15. Mr. Gonsalves then submitted that the submission made on behalf of the Respondent No.1 that the post of Rehbar-e-Taleem had not been mentioned as reserved in the Scheme and would not, therefore, come within the scope of Section 22 of the 1998 Act, was not tenable, since it is only when exemption is granted under the proviso to Section 22 by the State Government that the reservation provision would cease to exist. No exemption having been sought for in the present case, it could not be argued that the provisions for reservation in Section 22 would not apply to the Scheme relating to the appointment of persons as Rehbar-e-Taleem. It was submitted that the general principle relating to disability law deals

with substance and not the nomenclature for any particular post and the same would include the nomenclature used for other jobs and posts having identical functions. Mr. Gonsalves submitted that what was of importance in giving effect to the provisions of the 1998 Act is the principle of reasonable accommodation as provided for in Section 27 of the aforesaid Act which deals with the Scheme for ensuring employment for persons with disabilities. Mr. Gonsalves urged that the object of the 1998 Act is to try and rehabilitate and/or accommodate persons suffering from physical disabilities to have equal opportunities of employment in keeping with their physical disabilities so that they were not only able to provide for themselves but were also able to participate in mainstream activity and live a life of dignity in society.

16. Mr. Gonsalves submitted that the problem of rehabilitating disabled persons was not special to India alone, but was common to most of the other countries as well. He submitted that being conscious of the problem, most countries had enacted laws to make provision for the rehabilitation of persons with disabilities by taking recourse to the doctrine of reasonable accommodation to enable a handicapped person to use his or her abilities with the help of aids and/or adjustments. Referring to the decision in Appeal No.447 August Term 1994 of the United States Court of Appeal for the Second Circuit in the case of Kathleen Borkowski vs. Valley Central School District, Mr. Gonsalves pointed out that the central question in the said appeal was whether the teacher with disabilities, whose disabilities directly affected her capacity to perform her job, necessitated that her employer provide a teacher's aide as a form of reasonable accommodation under

the relevant legal provisions. In the said case, on account of a motor vehicle accident, the plaintiff Kathleen Borkowski had suffered major head trauma and sustained serious neurological damage and though her condition improved significantly after years of rehabilitative therapy, she did not recover completely resulting in continuing difficulties with memory and concentration. In addition, her balance, coordination and mobility continued to show the effects of her accident. Ms. Borkowski obtained employment as Library Teacher with the School District on a probationary term, but ultimately because of her failure to effectively control her class, the Superintendent of the School District decided that Ms. Borkowski's tenure should not be extended. Claiming discrimination, Ms. Borkowski challenged the said decision before the United States District Court for the Southern District of New York which granted summary judgment in favour

of the defendant Valley Central School District holding that having someone else to do a part of her job may sometimes mean eliminating the essential functions of the job, at other times providing an assistance to help the job may be an accommodation that does not remove an essential function of the job from the disabled employee. On such finding, the Court of Appeals set aside the order of the District Court and remanded the matter to the District Court for a fresh decision upon taking into consideration the doctrine of reasonable accommodation to enable a teacher to perform his/her functions as a teacher, which he/she was otherwise eligible and competent to perform.

17. Several other decisions on the same lines were also supplied by Mr. Gonsalves which only repeated what had been said in Kathleen Borkowski's case.

18. Mr. Gonsalves submitted that in the instant case the High Court had adopted a very unusual procedure in disqualifying the appellant and holding him unfit for teaching, despite the certificate given by the Headmaster of the School that the appellant had satisfactorily completed one year's service during which period he had conducted himself and the class assigned to him with efficiency. The said certificate dated 8.11.2007 indicates that he attended his classes regularly and for the academic year 2006-07 he had achieved the following results:

S.No.	Class	Subjects	Pass Percentage
1.	8th	Science	100%
2.	6th	Science	100%
3.	4th	Science	83%

19. Mr. Gonsalves submitted that during the pendency of the proceedings before the High Court, by an interim order dated 4th June, 2007, the Court had directed a Committee to be formed comprising of the Director, School Education and Head of the

Neurological Department, SKIN, to examine the appellant and to report on :

> "(a) What is the nature and extent of petitioner's handicap whatever;
>
> (a) Whether with said handicap he could discharge the normal duties of teacher in a Government school."

20. The report as submitted indicated that the appellant was suffering from Cerebral Palsy which affected his speech and writing as a result whereof he could not perform the job of a teacher. Mr. Gonsalves submitted that on the basis of the said report the High Court adopted the novel procedure of summoning the appellant to satisfy itself as to the appellant's condition and as to whether he could discharge his functions as a teacher. Based on its own assessment, the High Court found the appellant to be ineligible for appointment in a teaching job. Mr. Gonsalves submitted that at the time of questioning by the High Court, the appellant was not represented by any one and it is

not unnatural and/or unlikely that a person, who was already suffering from a disablement such as Cerebral Palsy which affected his speech, was further intimidated which rendered him unable to respond fluently to the questions put by the Court.

21. Mr. Gonsalves submitted that taking all other things into account, and, in particular the report of the Expert Committee appointed pursuant to the order dated 4.6.2007 of the High Court, which was of the view that the speech of the appellant is comprehensible up to 80% to 90% as indicated by the students themselves and the further certificate given that the appellant could handle lower classes easily even if the roll is big and where the teaching is done through models, the High Court had erred in rejecting the appellant's case for appointment as Rehbar-e-Taleem. Mr. Gonsalves urged that the Committee had noticed that the appellant was well-dressed and had a proper sense

of self-confidence as compared to the other staff and that the attitude of the appellant seemed to have a positive effect on the students. Mr. Gonsalves urged that the High Court had erred in understanding the object of the provisions of the 1998 Act in relation to persons with disabilities, such as the appellant before us. Mr. Gonsalves submitted that the order of the High Court lacked sensitivity and understanding and the same was contrary to the object for which the 1998 Act was enacted, and was, therefore, liable to be set aside.

22. The submissions made on behalf of the appellant were strongly opposed by Mr. Vijay Hansaria, learned Senior Advocate appearing for the Respondent No.1, Nazir Ahmed Shah, who was the writ petitioner before the High Court. Mr. Hansaria submitted that admittedly the Appellant was suffering from cerebral palsy, but the extent of

disablement on account thereof made him unfit for appointment as Rehbar-e-Taleem, which fact was corroborated by the certificate issued by the Head of the Department of Neurology, Sher-e-Kashmir Institute of Medical Sciences, dated 6th July, 2007, in which it was opined that the Appellant was suffering from cerebral palsy with significant speech and writing difficulties and that with such a handicap, it would be difficult for him to perform the duties of a teacher. Added to the said disability was the inability of the Appellant to speak fluently. It was submitted that without being able to write on the blackboard, it was next to impossible for a primary school teacher to teach children at the primary stage. Reference was made to the report of the Committee which had been constituted pursuant to the order passed by the High Court on 4th June, 2007, to examine the working of the Appellant in the school. Apart from indicating that he was able to make himself

understood to the students, who seemed to understand his teachings despite his speech impediments, the Committee also indicated that the Appellant was unable to take chalk in hand and write anything on the blackboard or draw any diagram, which was essential and vital for making students understand the lesson. It was the view of the Committee that use of the blackboard was a vital requirement for making students understand the lesson and this was a serious handicap which confronted the Appellant since the process of teaching was incomplete without the use of the blackboard. Mr. Hansaria pointed out that in the said Report it had also been stated that in order to overcome the difficulty of not being able to write, the Appellant requested the students to write the lessons on the blackboard, but, of course, a student could not be a substitute for a teacher in the matter of drawing diagrams and writing lessons on the blackboard. Accordingly,

the Committee felt concerned as to whether it would be possible for the Appellant to be able to hold a big class and though in the final analysis the Appellant seems to be intelligent and well-versed with the subject taught by him, which would have made him a good teacher, his speech and writing impediments were in his way. Mr. Hansaria referred to the disability certificate issued by the Chief Medical Officer, Pulwama, on 17th December, 2006, showing the Appellant to be suffering from dystonic cerebral palsy on account of which he was severely disabled physically to the extent of 60%.

23. Mr. Hansaria urged that the physical impairment of the Appellant was sufficient to make him ineligible for being continued as Rehbar-e-Taleem since it was against the interests of the students.

24. In addition to the above, Mr. Hansaria expressed grave doubts about the authenticity of the certificate said to have been issued by the

Block Development Officer, Tral, holding the Appellant to be clinically fit for any Government job while finding him physically handicapped due to cerebral palsy. Mr. Hansaria referred to the letter written by the Block Development Officer concerned in which he denied having written the last sentence in the certificate and that the same was a forgery.

25. Mr. Hansaria submitted that on the aforesaid grounds, the order passed by the High Court did not warrant any interference and the Appeal was liable to be dismissed.

26. Mr. Anis Suhrawardy, who appeared for the State of Jammu and Kashmir, submitted that the State Government had acted in the best interest of the students on the basis of the reports received from different Committees appointed both by the High Court and under the orders of the High Court for evaluating the performance of the Appellant during

the period of his appointment as Rehbar-e-Taleem. Mr. Suhrawardy submitted that while the appellant's performance was found to be reasonably good, his physical disabilities were of such nature that they interfered with his performance as a teacher. The said view had been expressed both by the medical authorities as well as the Committee consisting of Senior Officers which had made an on the spot assessment of the appellant's ability to perform his duties as a teacher. Even though holding that the appellant was handling his classes competently and his general demeanor and appearance conveyed a positive message to the others in the school, his primary function as a teacher was compromised on account of his inability to write and his lack of complete clarity of speech.

27. Mr. Suhrawardy submitted that while it is true that the 1998 Act had provided for a 1% reservation for people suffering from locomotor disorders

and/or cerebral palsy, such policy as contained in Section 22 of the Act could not have contemplated the appointment of a person with such disabilities as impaired his essential functioning as a teacher. Accordingly, acting on the advice of the Expert Committee, the State Government had no other option but to disengage the appellant from functioning as a Rehbar-e-Taleem, but, at the same time, identified another post in which he could be accommodated.

28. Having regard to the nature of the problem posed in this appeal in relation to the Jammu and Kashmir Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998, we have given our anxious consideration to the submissions made on behalf of the respective parties and the provisions of the aforesaid Act in arriving at a decision in the present case. It has to be kept in mind that this

case is not one of the normal cases relating to a person's claim for employment. This case involves a beneficial piece of social legislation to enable persons with certain forms of disability to live a life of purpose and human dignity. This is a case which has to be handled with sensitivity and not with bureaucratic apathy, as appears to have been done as far as the appellant is concerned.

29. As has been indicated hereinbefore, the object of the 1998 Act is to provide equal opportunities, care, protection, maintenance, welfare, training and rehabilitation to persons with disabilities. Section 2(d)(v) recognizes "locomotor disability" which is the result of cerebral palsy. Locomotor disability has also been separately defined in Section 2(j) to mean disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy. A "person with disability"

has been defined in Section 2(p) to mean a person suffering from not less than 40% of any disability as certified by a Medical Authority. Keeping the same in mind, Chapter V of the 1998 Act provides for employment of persons with disabilities. Section 21 deals with identification of posts which can be reserved for persons with disabilities. As we have indicated hereinbefore, Section 22 deals with reservation of posts and 1% of the vacancies available, is required under Section 22 to be reserved for persons suffering from locomotor disability or cerebral palsy in the posts identified for each disability. We have also noticed earlier, the provisions of Section 22 of the 1998 act which provide for schemes for ensuring employment of persons with disabilities. Under the said Section, the Government and local authorities are required to formulate schemes for ensuring employment of persons with disabilities.

30. Chapter VI of the Act makes provision for affirmative action and Section 31 thereof provides as follows :-

> **"31. Aids and appliances to persons with disabilities.**
>
> The Government shall by notification make schemes to provide aids and appliances to persons with disablities."

31. As submitted by Mr. Gonsalves, while a person suffering from cerebral palsy may not be able to write on a blackboard, an electronic external aid could be provided which could eliminate the need for drawing a diagram and the same could be substituted by a picture on a screen, which could be projected with minimum effort.

32. It is only to be expected that the movement of a person suffering from cerebral palsy would be jerky on account of locomotor disability and that his speech would be somewhat impaired, but despite the same, the Legislature thought it fit to provide for reservation of 1% of the vacancies for such

persons. So long as the same did not impede the person from discharging his duties efficiently and without causing prejudice to the children being taught, there could, therefore, be no reason for a rigid approach to be taken not to continue with the appellant's services as Rehbar-e-Taleem, particularly, when his students had themselves stated that they had got used to his manner of talking and did not have any difficulty in understanding the subject being taught by him.

33. Coupled with the above is the fact that the results achieved by him in the different classes were extremely good; his appearance and demeanour in school had been highly appreciated by the Committee which had been constituted pursuant to the orders of the High Court to assess the appellant's ability in conducting his classes. Reference may also be made to the observations made by an earlier Committee consisting of the Joint

Director of Education and the Chief Education Officer, Srinagar, wherein it was observed as follows :-

> "4. The candidate (petitioner) was called to the office in presence of Director School Education. He was found reading and talking well and thus assessed by Committee to be able to teach. His problem is that he cannot write.
>
> 5. On the overall consideration, with particular regard to the state policy on the rehabilitation of the physically handicapped, the Committee is of the view that the boy (petitioner) be given a chance. His appointment as ReT could also help restore a sense of self esteem in him. The Middle School, Kanjinagh having already six teaching staff in position, the petitioner not being able to write should not come in the way of his selection."

34. In the aforesaid background of events, the disengagement of the appellant as Rehbar-e-Taleem by virtue of the order of the Chief Education Officer, Pulwama, dated 19th January, 2008, goes against the grain of the 1998 Act. Apart from the fact that the appellant is a victim of cerebral

palsy, which impairs the movements of limbs and also the speech of a victim, there is nothing on record to show that the appellant had not been performing his duties as Rehbar-e-Taleem efficiently and with dedication. On the other hand, his performance as a teacher was reflected in the exceptionally good results that he achieved in his discipline in the classes taught by him.

35. It is unfortunate that inspite of the positive aspects of the appellant's functioning as Rehbar-e-Taleem and the clear and unambiguous object of the 1998 Act, the High Court adopted a view which was not compatible therewith. The High Court has dealt with the matter mechanically, without even referring to the 1998 Act or even the provisions of Sections 22 and 27 thereof. Instead, the High Court chose a rather unusual method in assessing the appellant's capacity to function as a teacher by calling him to appear before the Court and to

respond to questions put to him. The High Court appeared to be insensitive to the fact that as a victim of cerebral palsy, the appellant suffered from a slight speech disability which must have worsened on account of nervousness when asked to appear before the Court to answer questions. As has been submitted by Mr. Gonsalves, the intimidating atmosphere in which the appellant found himself must have triggered a reaction which made it difficult for him to respond to the questions put to him.

36. In our view, since the Committee constituted to assess his performance as a teacher notwithstanding his disability had formed a favourable impression about him, his tenure as a Rehbar-e-Taleem ought to have been continued without being pitch-forked into a controversy which was uncalled for. We are convinced that the approach of the local authorities, as well as the High Court, was not in

consonance with the objects of the 1998 Act and scheme of the State Government to fill up a certain percentage of vacancies with disabled candidates, and was too pedantic and rigid. The order of the High Court cannot, therefore, be sustained and has to be set aside.

37. The appeals, accordingly, succeed and are allowed. The impugned order of the High Court and that of the Chief Education Officer, Pulwama, dated 19th January, 2008, disengaging the appellant from functioning as Rehbar-e-Taleem, are hereby set aside. Consequently, the authorities are directed to allow the appellant to resume his functions as Rehbar-e-Taleem in the Middle School, Kanjinag, immediately upon communication of this order with continuity of service from the date of his disengagement as Rehbar-e-Taleem. The period during which the appellant was disengaged from his service as Rehbar-e-Taleem till the date of his resuming

duty in such post shall not be treated as break in service and he shall be entitled to all notional service benefits for the said period.

_____J.
(ALTAMAS KABIR)

_____J.
(CYRIAC JOSEPH)

New Delhi
Dated: 10.03.2010