

(2025) 10 KL CK 1313

In the High Court Of Kerala

Case No : Review Petition No. 1291 Of 2025

Kerala Public Service Commission

APPELLANT

Vs

Sheethal C.V

RESPONDENT

Date of Decision : 14-10-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 114, Order 47 Rule 1Kerala High Court Act, 1958 - Section 5(i)Rights of Persons with Disabilities Act, 2016 - Section 32, 33, 34, 34(c), 34(1)(c)

Citation : (2025) 10 KL CK 1313

Hon'ble Judges : Anil K. Narendran, J;Muralee Krishna S., J

Bench : Division Bench

Advocate : P.C.Sasidharan, Nisha Bose

Final Decision : Disposed Of

Judgement

Anil K. Narendran, J

1. The Kerala Public Service Commission (KPSC) has filed this review petition invoking the provisions under Order XLVII Rule 1 and Section 114 of the Code of Civil Procedure, 1908, seeking an order to review the judgment of this Court dated 23.07.2025 in W.A.No.221 of 2025 – Kerala Public Service Commission v. Sheethal C.V and others [2025:KER:54871 : 2025 (5) KHC SN 17 : 2025 KHC OnLine 850 : 2025 KLT OnLine 2583 : 2025 SCC OnLine Ker 5796].

2. KPSC, the 2nd respondent in W.P.(C)No.32605 of 2023, filed W.A.No.221 of 2025, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958, challenging the judgment of the learned Single Judge dated 18.12.2024 in that writ petition, which was one filed by the 1st respondent-petitioner seeking a writ of mandamus commanding the 3rd respondent Secretary to Government, Social Justice Department to identify and earmark posts under Section 34(c) of the Rights of Persons with Disabilities Act, 2016, as stipulated under Sections 32 and 33 of the said Act, and the relevant orders in this regard, in Ext.P4 ranked list published by KPSC, within a time frame to be fixed by this Court; a writ of

mandamus commanding the 4th respondent Secretary to Government, Higher Education Department to identify and earmark the posts under Sections 33 and 34 of the Act and to report the identified vacancies, with retrospective effect from the date on which Ext.P4 ranked list published by KPSC came into force, within a time frame to be fixed by this Court; and a writ of mandamus commanding KPSC to advise the petitioner for appointment against the first vacancy identified and earmarked for persons with locomotor disability, as stipulated under Section 34(c) of the Act in the event of respondents 3 and 4 complying with the directions contained in the 1st and 2nd reliefs sought for in the writ petition.

3. After considering the rival contentions, the learned Single Judge allowed W.P. (C)No.32605 of 2023, by the judgment dated 18.12.2024, and KPSC was directed to advise the writ petitioner for appointment against one vacancy identified for locomotor disability, as specified in Section 34(c) of the Act, within one month. Paragraphs 12 to 16 and also the last paragraph of the judgment read thus;

"12. Ext.P3 is the notification of the 2nd respondent for recruitment to the post of Professional Assistant Grade-II (Library). The Note (ii) under Clause 4 of the notification provides that recruitment should be in accordance with the ranks secured by the candidates, subject to the rules of reservation and rotation in force. Ext.P4 Rank list would show that the petitioner is ranked at 11 in the Supplementary Rank list for Ezhava/Thiyya/Billava. It is an admitted position that since the post of Professional Assistant Grade-II (Library) was not identified to be suitable for the recruitment of PwD, so far no appointments are made following the reservation provided under the Act, 2016.

13. Standing Counsel representing the 2nd respondent would submit that the post was identified as suitable for reservation under the Act, 2016 as per the Government Order 14.02.2024 of the Secretary to Government of Kerala, Social Justice Department. Standing Counsel for the 2nd respondent would submit that as the identification of the post came subsequently, no reservation can be applied and extended to the petitioner. When the notification was published, the post was not identified for the recruitment of persons with disabilities.

14. The question whether non-identification of post by the Government can adversely affect the chances of persons with disabilities was considered by the Hon'ble Apex Court in Government of India through Secretary and another v. Ravi Prakash Gupta and another [2010 (7) SCC 626]. The Hon'ble Apex Court held that PwDs cannot be appointed unless posts are identified under Section 32, but the provision for reservation under Section 33 became effective immediately when the Act came into force in the year 1996. The Legislature never intended the provisions of Section 32 of the Act to be used as a tool to deny the benefits of Section 33 to the categories of disabled persons indicated therein. Therefore, delay in identification of posts for grant of reservation under Section 33 of the Act, 2016, cannot in any manner adversely affect the candidates with physical

disabilities.

15. It is not disputed that pursuant to Ext.P3 notification and P4 Rank list, 159 candidates have been so far advised by the Public Service Commission. If that be so, at least six vacancies should be available to the physically disabled candidates and one of such vacancies should be earmarked for the persons with Locomotor Disability.

16. In the afore facts of the case, I do not find any justification to deny the benefit of reservation under the Rights of Persons with Disabilities Act, 2016, to the petitioner as the rank list is still current.

In the circumstances, the writ petition is allowed. The 2nd respondent is directed to advise the petitioner for appointment against one vacancy identified for Locomotor Disability category stipulated in Section 34(c) of the Act, 2016. Necessary advice shall be given within a period of one month."

4. The judgment dated 18.12.2024 of the learned Single Judge in W.P. (C)No.32605 of 2023 was under challenge in W.A.No.221 of 2025 filed by KPSC. The said writ appeal was disposed of by the judgment dated 23.07.2025. Paragraphs 37 to 41 and also the last paragraph of that judgment read thus;

"37. The stand taken by the Government in Annexure A2 order dated 14.08.2020, and also Annexure A4 letter dated 12.03.2025, whereby the request made by KPSC seeking a review of Annexure A2 order stands rejected, and also the stand taken by KPSC in Annexure A3 circular dated 18.02.2021, are per se arbitrary and patently illegal, which run counter to the legislative intent with which the 2016 Act was enacted. The acceptance of such a stand would render nugatory the reservation provided under Section 34 of the 2016 Act for differently abled persons with benchmark disabilities. The above stand taken in Annexures A2 to A4 is against the law laid down by the Apex Court in Government of India v. Ravi Prakash Gupta [(2010) 7 SCC 626] and that laid down by the Division Bench of this Court in Kerala Public Service Commission v. E. Dineshan [2016 (2) KHC 910]. It even strikes at the foundation of the provisions contained in Section 34 of the 2016 Act, which casts a statutory duty upon the appropriate Government to provide reservation for differently abled persons with benchmark disability, in the posts identified in every Government establishment by the expert committee constituted under the provisions of Section 33 of the said Act. Therefore, we reject as untenable the above stand taken by the Government and KPSC in Annexures A2 to A4.

38. As borne out from the Judge's papers in W.A.No.362 of 2015 and connected matters, the supplementary list referred to by the Division Bench in E. Dineshan [2016 (2) KHC 910], was the ranked list of differently abled candidates, who were found suitable based on the result of the very same objective type test (OMR verification) held on 23.02.2008, published by KPSC on 04.01.2011, vide Ext.P4 addendum notification in W.P.(C)No. 27234 of 2011, when the post was identified for 3% reservation of differently abled candidates as per G.O.

(P)No.8/2010/SWD dated 01.02.2010. The said list was not a supplementary list for communal reservation, consisting of the candidates eligible for such reservation, as contended by the 1st respondent-petitioner.

39. In the instant case, KPSC published Ext.P3 notification dated 16.06.2021 for appointment to the post of Professional Assistant Gr.II (Library) in various Universities in Kerala. The ranked list published by KPSC, vide Ext.P4 notification, came into force with effect from 17.06.2023. In Ext.P4 ranked list, the 1st respondent-petitioner is Rank No.11 in the supplementary list for Ezhava/Thiyya/Billava category. Pursuant to the direction contained in the order of the learned Single Judge dated 16.11.2023 in W.P.(C)No.32606 of 2023, Ext.P10 Government order dated 14.02.2024 was issued, identifying the post of Professional Assistant Gr.II (Library) in the Universities in Kerala, invoking the provisions under Section 33 of the 2016 Act, as suitable for 4% reservation provided under Section 34 for differently abled candidates with benchmark disabilities.

40. In view of the mandatory requirements of the reservation provided under Section 34 of the 2016 Act, read with the provisions contained in Section 33 regarding identification of posts, the ratio of the decision of the Apex Court in Ravi Prakash Gupta [(2010) 7 SCC 626] and that of the decision of the Division Bench of this Court in E. Dineshan [2016 (2) KHC 910], 4% vacancies for reservation provided under Section 34 of the said Act for differently abled candidates with benchmark disabilities, in the post of Professional Assistant Gr.II (Library) in the Universities in Kerala, identified vide Ext.P10 Government order dated 14.02.2024, have to be considered as having arisen during the currency of Ext.P4 ranked list, which came into force with effect from 17.06.2023. Such vacancies in the post of Professional Assistant Gr.II (Library) in the Universities in Kerala are to be filled up, during the currency of Ext.P4 ranked list, by differently abled candidates with benchmark disabilities available in the said ranked list (main list and supplementary lists for communal reservations), after preparing a separate ranked list for reservation of differently abled candidates with benchmark disabilities, based on their ranking in Ext.P4 ranked list, to comply with the mandatory requirements of the reservation provided under Section 34 of the 2016 Act. In that view of the matter, the direction contained in the impugned judgment dated 18.12.2024, whereby KPSC has been directed to advise the 1st respondent-petitioner, who is a candidate included in the supplementary list for communal reservation in Ext.P4 ranked list, for appointment as Professional Assistant Gr.II (Library) in the Universities in Kerala, against one vacancy identified for the category locomotor disability under Section 34(1)(c) of the 2016 Act, without preparing a separate ranked list for reservation of differently abled persons with benchmark disabilities, in the manner stated as above, cannot be sustained in law.

41. As per Note (3) of Ext.P4 notification, the ranked list published by KPSC will be in force till the publication of a new ranked list after the expiry of a minimum

period of one year or till the expiry of three years, whichever is earlier. The candidates from the ranked list will be advised for the appointment, in accordance with the rules and orders regarding reservation and rotation, as amended from time to time, if applicable, against the vacancies reported to KPSC during the pendency of the ranked list. The ranked list for the post of Professional Assistant Gr.II (Library) in the Universities in Kerala, published vide Ext.P4 notification issued by KPSC, came into force with effect from 17.06.2023. The learned Standing Counsel for KPSC would submit that the said ranked list is still in force.

In such circumstances, this writ appeal is disposed of by setting aside the impugned judgment dated 18.12.2024 of the learned Single Judge in W.P. (C)No.32605 of 2023. The said writ petition is disposed of by directing the appellant KPSC, the 2nd respondent in the writ petition, and the 1st respondent State to consider 4% vacancies for reservation provided under Section 34 of the 2016 Act for differently abled candidates with benchmark disabilities, in the post of Professional Assistant Gr.II (Library) in the Universities in Kerala, identified vide Ext.P10 Government order dated 14.02.2024, as having arisen during the currency of Ext.P4 ranked list, which came into force with effect from 17.06.2023. Such vacancies in the post of Professional Assistant Gr.II (Library) in the Universities in Kerala shall be filled up, during the currency of Ext.P4 ranked list, by differently abled candidates with benchmark disabilities available in the said ranked list (main list and supplementary lists for communal reservations), after preparing a separate ranked list for reservation of differently abled candidates with benchmark disabilities, based on their ranking in Ext.P4 ranked list, as per the mandatory requirements of the reservation provided under Section 34 of the 2016 Act. Such a ranked list shall be published, as expeditiously as possible, at any rate, within one month from the date of receipt of a certified copy of this judgment, and the eligible candidates, as per their position in the said ranked list, shall be advised for appointment, in accordance with the reservation provided under Section 34 of the 2016 Act, within a further period of one month.”

5. In this review petition filed by KPSC it is contended that there is error apparent on the face of record warranting review of the judgment of this Court dated 23.07.2025 in W.A.No.221 of 2025. By the said judgment, this Court directed KPSC to prepare a separate ranked list for differently abled candidates with benchmark disabilities based on the ranking in Ext.P4 ranked list. While preparing a separate ranked list of differently abled candidates with benchmark disabilities, in terms of the directions contained in the judgment of this Court dated 23.07.2025, all such candidates applied to the post should be given an equal opportunity or else it will adversely affect their rights. The preparation of supplementary list is by relaxing the eligibility criteria, to the extent necessary, as per the provisions contained in Rule 15(e) of the Kerala State and Subordinate Service Rules (KS&SSR). There is a huge gap of marks between a candidate included in the supplementary list and the candidate in the main list. In the list

for differently abled candidates with benchmark disability, no communal reservation as provided in Rules 14 to 17 of KS&SSR is applicable. If the preparation of the ranked list is confined to differently abled candidates with benchmark disabilities already in Ext.P4 ranked list alone, it will cause serious prejudice to such differently abled candidates, who could otherwise find a place in the ranked list. Out of 40 differently abled candidates with benchmark disabilities, who submitted applications for the post pursuant to Ext.P3 notification dated 16.06.2021 issued by KPSC for appointment to the post of Professional Assistant Gr.II (Library) in various Universities in Kerala, only 34 candidates submitted confirmation for writing the examination. From among them, only 26 candidates attended the online examination held on 21.07.2022. Three of them found a place in Ext.P4 ranked list. The remaining 23 candidates (LD/CP - 16, LV - 4, HI - 3, MD - Nil) were not considered for inclusion in the ranked list since there is no separate list for differently abled candidates. The aforesaid 26 candidates, who attended the online examination held on 21.07.2022, are eligible to be considered for inclusion in the ranked list to various categories of differently abled candidates with benchmark disabilities. The said aspect of the matter could not be brought to the notice of this Court while W.A.No.221 of 2025 was finally heard on 08.07.2025.

6. We heard arguments of the learned Standing Counsel for KPSC for the review petitioner, the learned counsel for the 1st respondent-writ petitioner and also the learned Senior Government Pleader for respondents 2 to 4 on the above aspect.

7. In paragraph 40 of the judgment dated 23.07.2025 in W.A.No.221 of 2025, which is sought to be reviewed in this review petition, this Court held that, in view of the mandatory requirements of the reservation provided under Section 34 of the Rights of Persons with Disabilities Act, 2016 (the 2016 Act), read with the provisions contained in Section 33 regarding identification of posts, the ratio of the decision of the Apex Court in Ravi Prakash Gupta [(2010) 7 SCC 626] and that of the decision of the Division Bench of this Court in E. Dineshan [2016 (2) KHC 910], 4% vacancies for reservation provided under Section 34 of the said Act for differently abled candidates with benchmark disabilities, in the post of Professional Assistant Gr.II (Library) in the Universities in Kerala, identified vide Ext.P10 Government order dated 14.02.2024, have to be considered as having arisen during the currency of Ext.P4 ranked list, which came into force with effect from 17.06.2023. This Court held further that such vacancies in the post of Professional Assistant Gr.II (Library) in the Universities in Kerala are to be filled up, during the currency of Ext.P4 ranked list, by differently abled candidates with benchmark disabilities available in the said ranked list (main list and supplementary lists for communal reservations), after preparing a separate ranked list for reservation of differently abled candidates with benchmark disabilities, based on their ranking in Ext.P4 ranked list, to comply with the mandatory requirements of the reservation provided under Section 34 of the 2016 Act. Consequently, in the last paragraph of the judgment dated 23.07.2025 in W.A.No.221 of 2025 this Court issued a direction whereby the KPSC and the

State of Kerala were directed to consider 4% vacancies for reservation provided under Section 34 of the 2016 Act for differently abled candidates with benchmark disabilities, in the post of Professional Assistant Gr.II (Library) in the Universities in Kerala, identified vide Ext.P10 Government order dated 14.02.2024, as having arisen during the currency of Ext.P4 ranked list, which came into force with effect from 17.06.2023 and that, such vacancies shall be filled up, during the currency of Ext.P4 ranked list, by differently abled candidates with benchmark disabilities available in the said ranked list (main list and supplementary lists for communal reservations), after preparing a separate ranked list for reservation of differently abled candidates with benchmark disabilities, based on their ranking in Ext.P4 ranked list, as per the mandatory requirements of the reservation provided under Section 34 of the 2016 Act. This Court directed that such a ranked list shall be published, as expeditiously as possible, at any rate, within one month from the date of receipt of a certified copy of the judgment dated 23.07.2025, and the eligible candidates, as per their position in the said ranked list, shall be advised for appointment, in accordance with the reservation provided under Section 34 of the 2016 Act, within a further period of one month.

8. The Government India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, issued Office Memorandum No.36035/3/2004-Estt.(Res) dated 29.12.2005, with a view to consolidating the existing instructions, bringing them in line with the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (the 1995 Act) and clarifying certain issues, including procedural matters, on reservation for persons with disabilities in posts and services under the Government of India, in supersession of all previous instructions issued on the subject. Paragraph 7 of that office memorandum, which deals with the adjustment of candidates selected on their own merit, reads thus;

"7. Adjustment of candidates selected on their own merit: Persons with disabilities selected on their own merit without relaxed standards along with other candidates, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible candidates with disabilities which will thus comprise physically handicapped candidates who are lower in merit than the last candidate in merit list but otherwise found suitable for appointment, if necessary, by relaxed standards. It will apply in case of direct recruitment as well as promotion, wherever reservation for persons with disabilities is admissible."

(underline supplied)

9. In view of the provisions contained in paragraph 7 of Office Memorandum No.36035/3/2004-Estt.(Res) dated 29.12.2005, which deals with the adjustment of candidates selected on their own merit, differently abled persons with benchmark disabilities selected on their own merit without relaxed standards, along with other candidates, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the

eligible candidates with benchmark disabilities, which will thus comprise of differently abled candidates with benchmark disabilities who are lower in merit than the last candidate in the merit list but otherwise found suitable for appointment, if necessary, by relaxed standards. Therefore, differently abled persons with benchmark disabilities selected on their own merit, without relaxed standards, cannot be adjusted against the reserved share of vacancies.

10. As pointed out in this review petition, out of 40 differently abled candidates with benchmark disabilities, who submitted applications for the post pursuant to Ext.P3 notification dated 16.06.2021 issued by KPSC for appointment to the post of Professional Assistant Gr.II (Library) in various Universities in Kerala, only 34 candidates submitted confirmation for writing the examination. From among them, only 26 candidates attended the online examination held on 21.07.2022. Three of them found a place in Ext.P4 ranked list. The remaining 23 candidates were not considered for inclusion in the ranked list since there is no separate list for differently abled candidates. The aforesaid 26 candidates, who attended the online examination held on 21.07.2022, are eligible to be considered for inclusion in the ranked list to various categories of differently abled candidates with benchmark disabilities.

11. In such circumstances, this review petition is disposed of by reviewing the judgment dated 23.07.2025 of this Court in W.A.No.221 of 2025 by modifying the findings in paragraph 40 of the said judgment as follows;

“In view of the mandatory requirements of the reservation provided under Section 34 of the Rights of Persons with Disabilities Act, 2016 (the 2016 Act), read with the provisions contained in Section 33 regarding identification of posts, the ratio of the decision of the Apex Court in Ravi Prakash Gupta [(2010) 7 SCC 626] and that of the decision of the Division Bench of this Court in E. Dineshan [2016 (2) KHC 910], 4% vacancies for reservation provided under Section 34 of the said Act for differently abled candidates with benchmark disabilities, in the post of Professional Assistant Gr.II (Library) in the Universities in Kerala, identified vide Ext.P10 Government order dated 14.02.2024, have to be considered as having arisen during the currency of Ext.P4 ranked list, which came into force with effect from 17.06.2023. Such vacancies in the post of Professional Assistant Gr.II (Library) in the Universities in Kerala are to be filled up, during the currency of Ext.P4 ranked list, by considering the eligibility of 26 differently abled candidates with benchmark disabilities, who attended the online examination held on 21.07.2022, with relaxed standards, and after preparing a separate ranked list for reservation of differently abled candidates with benchmark disabilities, to comply with the mandatory requirements of the reservation provided under Section 34 of the 2016 Act.”

12. Consequently, the direction contained in the last paragraph of the judgment dated 23.07.2025 in W.A.No.221 of 2025 of this Court is also modified as follows;

“The KPSC and the State of Kerala are directed to consider 4% vacancies for

reservation provided under Section 34 of the 2016 Act for differently abled candidates with benchmark disabilities, in the post of Professional Assistant Gr.II (Library) in the Universities in Kerala, identified vide Ext.P10 Government order dated 14.02.2024, as having arisen during the currency of Ext.P4 ranked list, which came into force with effect from 17.06.2023. Such vacancies shall be filled up, during the currency of Ext.P4 ranked list, by considering the eligibility of 26 differently abled candidates with benchmark disabilities, who attended the online examination held on 21.07.2022, with relaxed standards, and after preparing a separate ranked list for reservation of differently abled candidates with benchmark disabilities, to comply with the mandatory requirements of the reservation provided under Section 34 of the 2016 Act.”

A separate ranked list for reservation of differently abled candidates with benchmark disabilities, to comply with the mandatory requirements of the reservation provided under Section 34 of the 2016 Act, in terms of the above directions, shall be published by KPSC, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a certified copy of this order, and the eligible candidates, as per their position in the said ranked list, shall be advised for appointment, in accordance with the reservation provided under Section 34 of the 2016 Act, within a further period of one month.