

WP(C) NO. 40356 OF 2022
& 4470 of 2023

1



2025:KER:10773

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE D. K. SINGH

THURSDAY, THE 6TH DAY OF FEBRUARY 2025 / 17TH MAGHA, 1946

WP(C) NO. 40356 OF 2022

PETITIONER:

MRS.SHINU K.R.
AGED 47 YEARS
W/O ADV. MAHESH RAM, THUMARAPARAMBIL HOUSE, MYLAPRA P.O,
KONNY TALUK, PATHANMTHITTHA DISTRICT. PIN: 689 671.

BY ADVS.
N.N.SASI
HARISANKAR S.(K/000702/2023)

RESPONDENTS:

- 1 THE STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM, PIN: 695 001.
- 2 THE PRINCIPAL SECRETARY,
HOME DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN: 695
001.
- 3 THE SECRETARY
LAW DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN: 695
001.
- 4 THE SECRETARY
SOCIAL JUSTICE (D) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN: 695 001.
- 5 THE DISTRICT COLLECTOR
COLLECTORATE, PATHANAMTHITTA, PIN: 689 645.

WP(C) NO. 40356 OF 2022
& 4470 of 2023

2



2025:KER:10773

BY ADVS.
ADVOCATE GENERAL OFFICE KERALA
SHRI.V.MANU, SENIOR G.P. (GP-46)

SR GP- BIMAL K NATH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
06.02.2025, ALONG WITH WP(C) .4470/2023, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:



2025:KER:10773

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE D. K. SINGH

THURSDAY, THE 6TH DAY OF FEBRUARY 2025 / 17TH MAGHA, 1946

WP(C) NO. 4470 OF 2023

PETITIONER:

ADV. BINO GEORGE
AGED 55 YEARS
S/O M. GEORGEKUTTY, MANNICKAROTTU HOUSE, PANNIVIZHA, ADOOR
VILLAGE, ADOOR TALUK, PATHANAMTHITTA DISTRICT, PIN - 691523

BY ADVS.
MANU RAMACHANDRAN
M.KIRANLAL
R.RAJESH (VARKALA)
SAMEER M NAIR
GEETHU KRISHNAN
SAILAKSHMI MENON

RESPONDENTS:

- 1 THE STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM DISTRICT, PIN - 695001
- 2 THE PRINCIPAL SECRETARY
HOME DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM DISTRICT,
PIN - 695001
- 3 THE SECRETARY
LAW DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM DISTRICT,
PIN - 695001
- 4 THE SECRETARY
SOCIAL JUSTICE (D) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM DISTRICT, PIN - 695001
- 5 THE DISTRICT COLLECTOR

WP(C) NO. 40356 OF 2022
& 4470 of 2023

4



2025:KER:10773

COLLECTORATE, PATHANAMTHITTA DISTRICT, PIN - 689645

6 ADDL.R6: THE STATE COMMISSIONER FOR PERSONS WITH
DISABILITIES,
OFFICE OF STATE COMMISSIONER FOR PERSONS WITH DISABILITIES,
JAWAHAR NAGAR, SASTHAMANGALAM, THIRUVANANTHAPURAM, PIN-695
003 (ADDL.R6 IS IMPEADED AS PER ORDER DATED 02.11.2024 IN
IA NO.3/2024 IN WP(C) NO.4470/2023)

SRI.BIMAL K.NATH - SR.G.P

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
06.02.2025, ALONG WITH WP(C).40356/2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



2025:KER:10773

'C.R'

JUDGMENT**Dated this the 6th day of February, 2025**

These writ petitions have been filed seeking a writ of mandamus or any appropriate writ, order or direction to the respondents to make reservation in favour of the person with benchmark disabilities while engaging the Public Prosecutor in Pathanamthitta district.

2. The learned counsel for the petitioners have submitted that Section 34 of the Rights of Persons with Disabilities Act, 2016(hereinafter referred to as 'Act of 2016) envisages to give reservation of 4% of the total number of vacancies in the cadre strength in each group of posts to the persons with benchmark disabilities i.e, one per cent each for benchmark disability defined in the Act.

3. The submission is that the Public Prosecutors are also appointed by the Government, and this is public employment in the state and therefore, the reservation to the person with disabilities should be given while



2025:KER:10773

appointing Public Prosecutors. It is further submitted that the Government is not giving any reservation to persons with disabilities while appointing Public Prosecutors, which is a clear violation of the mandate of Section 34 of the Act of 2016, and the Government should be directed to make provisions for giving reservations to the persons with benchmark disabilities while making appointments of Public Prosecutors.

4. On the other hand, Sri.Bimal K.Nath learned Government Pleader submits that Section 34 envisages reservation to persons with benchmark disabilities against vacancies in a cadre. There is no cadre of Public Prosecutors, and there are no vacancies in the cadre against which the reservations to the person with benchmark disabilities can be made. It is submitted that Public Prosecutors are engaged by the Government from the bar to defend its cases. It is the choice of a client to engage any person of competence to defend its cases. No horizontal or vertical reservation can be made while



2025:KER:10773

engaging Public Prosecutors inasmuch as there is no cadre of Public Prosecutors and there are no vacancies as per Section 34 of the Act of 2016, against which the reservation can be made. The learned Government Pleader relied on the Judgment of the Hon'ble Supreme Court in the case of the **State of U.P and others v. U.P. State Law Officers Association and others** [(1994)2 SCC 204]. The relevant paragraphs of the said judgment read as under:

“13. The appointment of lawyers by the Government and the public bodies to conduct work on their behalf, and their subsequent removal from such appointment have to be examined from three different angles, viz., the nature of the legal profession, the interests of the public and the modes of the appointment and removal.

14. Legal profession is essentially a service-oriented profession. The ancestor of today's lawyer was no more than a spokesman who rendered his services to the needy members of the society by articulating their case before' the authorities that be. The services were rendered without regard to the remuneration received or to be received. With the growth of litigation, lawyering became a full-time occupation and most of the lawyers came to depend upon-it as the sole source of livelihood. The nature of the service rendered by the lawyers was private till the Government and the public bodies started engaging them to conduct cases on their behalf. The Government and the public bodies engaged the services of the lawyers purely on a contractual basis either for a specified case or for a specified or an unspecified period. Although the contract in some cases prohibited the lawyers from accepting private briefs, the nature of the contract did not alter from one



2025:KER:10773

of professional engagement to that of employment. The lawyer of the Government or a public body was not its employee but was a professional practitioner engaged to do the specified work. This is so even today, though the lawyers on the full-time rolls of the Government and the public bodies are described as their law officers. It is precisely for this reason that in the case of such law officers, the saving clause of Rule 49 of the Bar Council of India Rules waives the prohibition imposed by the said rule against the acceptance by a lawyer of a full-time employment.

15. The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him also, for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer. The lawyer in turn is not an agent of his client but his dignified, responsible spokesman. He is not bound to tell the court every fact or urge every proposition of law which his client wants him to do, however irrelevant it may be. He is essentially an adviser to his client and is rightly called a counsel in some jurisdictions. Once acquainted with the facts of the case, it is the lawyer's discretion to choose the facts and the points of law which he would advance. Being a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client. This relationship between the lawyer and the private client is equally valid between him and the public bodies.

16. Over the years, the public sector has grown considerably, and with its extension and expansion, the number of lawyers engaged in the public sector has increased noticeably so much so that it can truly be said that today there is a public sector in the legal profession as well. The expansion of the public sector activities has necessitated the maintenance of a permanent panel of lawyers. Some of the lawyers are also in full-time employment of the public institutions as their law officers. The profile of the legal



2025:KER:10773

profession has thus undergone a change.

17. The Government or the public body represents public interests, and whoever is in charge of running their affairs, is no more than a trustee or a custodian of the public interests. The protection of the public interests to the maximum extent and in the best possible manner is his primary duty. The public bodies are, therefore, under an obligation to the society to take the best possible steps to safeguard its interests. This obligation imposes on them the duty to engage the most competent servants, agents, advisers, spokesmen and representatives for conducting their affairs. Hence, in the selection of their lawyers, they are duty-bound to make earnest efforts to find the best from among those available at the particular time. This is more so because the claims of and against the public bodies are generally monetarily substantial and socially crucial with far-reaching consequences.

18. The mode of appointment of lawyers for the public bodies, therefore, has to be in conformity with the obligation cast on them to select the most meritorious. An open invitation to the lawyers to compete for the posts is by far the best mode of such selection. But sometimes the best may not compete or a competent candidate may not be available from among the competitors. In such circumstances, the public bodies may resort to other methods such as inviting and appointing the best available, although he may not have applied for the post. Whatever the method adopted, it must be shown that the search for the meritorious was undertaken and the appointments were made only on the basis of the merit and not for any other consideration."

5. It is further submitted that the appointment of Public Prosecutors and Government Pleaders in District courts is governed by the Kerala Government Law Officers (Appointment and Conditions of Service) Rules, 1976.



2025:KER:10773

(hereinafter referred to as '1976 Rules') Section 24 of the Code of Criminal Procedure, 1973 and Section 18 of the Bharatiya Nyaya Sanhita, 2023 and Rule 8 of the 1976 Rules delineate the method of appointment of Government Law Officers at the District level. As per Rule 8 (9) of 1976 Rules, the term of appointment of the Government Law Officers at the district level is for a period of three years. Rule 17 of 1976 Rules provides that the Government may terminate the appointment of any Government Law Officers at any time before the expiry of the terms of his appointment without assigning any reason by giving one months' notice or by paying one month's salary in lieu of such notice. The Government Pleaders and Public Prosecutors do not constitute a cadre in service and therefore, there is no question of applying Section 34 of the Act of 2016.

6. I have considered the submissions advanced on behalf of the parties. Section 34 of the Act of 2016 reads as under:



2025:KER:10773

“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



2025:KER:10773

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."

7. Thus, the reservation up to 4% to the persons with benchmark disabilities in a service. The 4% reservation is against the vacancies in a cadre. The appointment of the Government Pleader and Public Prosecutor is not an appointment in a service which has a cadre strength, and there are no vacancies against which the reservation of 4% under Section 34 of the Act of 2016 can be made applicable. Even otherwise, the appointment of the Advocates as Government Pleader or Public Prosecutor is fiat of the Government which is a client before the Court and the Government is entitled to appoint the best of the Advocates as Government Pleader and Public Prosecutor to



2025:KER:10773

defend its cases. No one has the right to be appointed as Government Pleader and Public Prosecutor. The appointment of Government Pleaders and Public Prosecutors is at the pleasure of the Government, and the tenure of such appointment can be terminated at the pleasure of the Government as held in paragraphs 13 to 18 of the judgment of the Hon'ble Supreme Court in the case of the **State of U.P and others** (supra).

In view thereof, the direction as sought in these writ petitions cannot be given inasmuch as the provisions of Section 34 of the Act of 2016 have no application in appointments of Advocates as Government Pleaders and Public Prosecutors. Therefore, I find no substance in these writ petitions, which are hereby dismissed.

Sd/-

D. K. SINGH
JUDGE

AP



2025:KER:10773

D. K. SINGH, J.

W.P.(C) No. 40356 of 2022
And
W.P.(C.) No.4470 of 2023

Dated this the 20th day of February, 2025

ORDER

This Court *suo motu* corrects the following in the judgment dated 06.02.2025:

- (i) The year of the Kerala Government Law Officers (Appointment and Conditions of Service) Rules appearing as '1976' in the judgment is corrected as '1978'.
- (ii) 'Rule 8(9)' appearing in the fifth line of paragraph 5 in page 10 of the judgment shall be corrected as 'Rules 8 and 9' of 1978 Rules.

Sd/-
D. K. SINGH
JUDGE

AP



2025:KER:10773

APPENDIX OF WP(C) 4470/2023

PETITIONER EXHIBITS

- | | |
|------------|--|
| Exhibit P1 | THE TRUE COPY OF THE STANDING DISABILITY
CERTIFICATE DATED 03.02.2009 OF THE PETITIONER
ISSUED BY THE STANDING DISABILITY ASSESSMENT
BOARD, GENERAL HOSPITAL, PATHANAMTHITTA |
| Exhibit P2 | THE TRUE COPY OF THE NOTIFICATION ISSUED BY THE
5TH RESPONDENT DATED 19.10.2022 BY VIRTUE OF
LETTER NO. DCPTA/5522/2022/S2(2) |
| Exhibit P3 | THE TRUE COY OF THE APPLICATION TO THE POST OF
DISTRICT GOVERNMENT PLEADER AND PUBLIC PROSECUTOR
SUBMITTED BY THE PETITIONER TO THE 5TH RESPONDENT
DATED 03.11.2022 ALONG WITH BIO-DATA |
| Exhibit P4 | THE TRUE COPY OF THE REPRESENTATION VIA EMAIL
DATED 24.01.2023 GIVEN BY THE PETITIONER TO THE
RESPONDENTS |
| Exhibit P5 | THE TRUE COPY OF THE REPLY EMAIL DATED 25.01.2023
ACKNOWLEDGING THE RECEIPT OF THE EXT.P4
REPRESENTATION BY THE OFFICE OF THE 5TH
RESPONDENT |
| Exhibit P6 | THE TRUE COPY OF THE COMMUNICATION NO. 18 INS-
1/2023/LAW DATED 21/2/2023 ISSUED BY THE 3RD
RESPONDENT TO PETITIONER |



2025:KER:10773

APPENDIX OF WP(C) 40356/2022

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE NOTIFICATION ISSUED BY THE 5TH RESPONDENT DATED 19-10-2022 BY VIRTUE OF LETTER NO. INS/B189/2022/LAW DATED 01-10-2022 ALONG WITH COVERING LETTER DATED 21.10.2022 OF DISTRICT JUDGE PATHANAMTHITTA.
- Exhibit P2 THE TRUE COPY OF THE APPLICATION GIVEN THE PETITIONER TO THE 5TH RESPONDENT DATED 03-11-2022 ALONG WITH BIO-DATA, SELF ATTESTED COPIES OF S.S.L.C CERTIFICATE, DEGREE CERTIFICATE, CERTIFICATE OF LL.B CERTIFICATE OF ENROLMENT, CERTIFICATE OF MARRIAGE, DISABILITY CERTIFICATE.
- Exhibit P3 THE TRUE COPY OF THE REPRESENTATION DATED 03-12-2022 GIVEN BY THE PETITIONER DATED 03-12-2022 BEFORE THE RESPONDENT 2,3 & 5.
- Exhibit P4 TRUE COPY OF THE ENDORSEMENT IN THE ACKNOWLEDGEMENT CARD RECEIVED BY THE RESPONDENTS 23 & 5.
- Exhibit P5 TRUE COPY OF THE APPOINTMENT ORDER ISSUED BY THE STATE OF KERALA DATED 22-05-2023
- Exhibit P6 THE TRUE COPY OF THE ORDER DATED 25-05-2023 ISSUE BY THE 4TH RESPONDENT
- Exhibit P6 TRUE COPY OF THE ORDER DATED 08-06-2023 ISSUED BY THE 4TH RESPONDENT

RESPONDENT ANNEXURES

- Annexure R1(a) A true copy of the Government letter dated 28.12.2022 sent to the petitioner by the Additional Secretary to Government, Law Department, on behalf of the Law Secretary