IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

WA NO. 474 OF 2025

AGAINST THE ORDER DATED 03.03.2025 IN WP(C) NO.1927 OF 2023 OF HIGH COURT OF KERALA

APPELLANT/APPLICANT/6TH RESPONDENT:

**THE ST.XAVIERS COLLEGE
KOTHAVARA P.O., KOTTAYAM, KERALA-, REPRESENTED BY ITS MANAGER, PIN - 686607**

**BY ADVS.
NISHA GEORGE
A.L.NAVANEETH KRISHNAN
GEORGE POONTHOTTAM (SR.)**

RESPONDENT/S:

1. **SHIBU MATHEW
AGED 38 YEARS, S/O MATHEW C.M, CHEMBUTHOOKIL HOUSE, KOTHAVARA P.O., VAIKKOM KOTTAYAM, PIN - 686607**

2. **STATE OF KERALA
SECRETARIAT, THIRUVANANTHAPURAM- REPRESENTED BY ITS CHIEF SECRETARY, PIN - 695001**

3. **THE SECRETARY
DEPARTMENT OF HIGHER EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001**

4. **THE SECRETARY
DEPARTMENT OF SOCIAL JUSTICE, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001**

5 THE DIRECTOR OF COLLEGIATE EDUCATION
6TH FLOOR, VIKAS BHAVAN, VIKAS BHAVAN P.O,
THIRUVANANTHAPURAM, PIN - 695033

6 THE STATE COMMISSIONERATE FOR PERSONS WITH DISABILITIES,ANJANAYAM, TC-9/1023(1), GROUND FLOOR, SASTHAMANGALAM, THIRUVANANTHAPURAM- REPRESENTED BY ITS COMMISSIONER, PIN - 695010

7 SIBI V. EPPEN
OFFICE ATTENDANT, THE ST. XAVIERS COLLEGE, KOTHAVARA P.O., KOTTAYAM, KERALA, PIN - 686607

OTHER PRESENT:

Smt. Vinitha B, Sr GP
SMT.AMRITA JAYARAM
SRI.N.ANAND
SRI.BIJITH S.KHAN
SHRI.RAJESH O.N.

THIS WRIT APPEAL WAS FINALLY HEARD ON 18.03.2025, THE COURT ON 10.04.2025 PASSED THE FOLLOWING:

JUDGMENT

Muralee Krishna, J.

This is an intra-court appeal filed under section 5(i) of the Kerala High Court Act, 1958, by the 6th respondent in W.P.(C)No.1927 of 2023 challenging the interim order dated 03.03.2025 passed by the learned Single Judge in I.A. No.6 of 2025, refusing to vacate the interim order dated 21.01.2025 passed in that writ petition whereby the appellant was directed to defer appointment to the post of Office Attendant notified in Ext.P24 notification dated 05.11.2024, pending disposal of the writ petition.

2. The writ petition is one filed under Article 226 of the Constitution of India by the 1st respondent herein, seeking the following reliefs:

> "(i) issue a writ of Certiorari or any other appropriate Writ, Order or Direction setting aside Ext. P11 Minutes of the Staff Selection Committee of the 6th respondent College and the appointment of respondent No. 7 as office attendant.
> (ii) issue a writ of Certiorari or any other appropriate order or direction setting aside Ext.P20 Order passed by the 5th respondent Commission;
> (iii) issue writ of certiorari or any other appropriate Writ,

Order or direction quashing Ext.P22 order approving the appointment of respondent No.7.

"iii (a) issue a writ of certiorari or any other writ, order, or direction quashing Exts.P24, P28 order and notification to the extent they reserve one post under the quota marked for the differently abled under the Rights of Persons with Disabilities Act, 2016 in favour of the visually impaired.

(iv) issue a writ of mandamus or any other appropriate writ order or direction directing respondent No.6 to appoint the petitioner as office attendant forthwith"

3. The 1st respondent is a person suffering from 40% permanent orthopaedic disability. He participated in the selection process for the post of Office Attendant in the appellant College conducted pursuant to the notification dated 27.11.2019. By the said notification, two vacancies of Office Attendants were notified. The 1st respondent attended the interview also. However, the appellant appointed two non-differently-abled persons as Office Attendants. By Ext.P7 order dated 15.02.2021 issued by the Secretary of the Department of Higher Education the benefit of the Right of Persons with Disabilities Act, 2016 is extended to the aided Colleges also. Again by Ext.P8 notification, the appellant notified one vacancy of Office Attendant. The 1st respondent submitted Ext.P9 application dated 26.03.2021. The respondent

was called for an interview. However, the appointment was given to the 7th respondent, a non-differently-abled person as Office Attendant. The 1st respondent then submitted Ext.P16 complaint dated 24.09.2021 before the Kerala State Commissionerate for Persons with Disabilities, complaining that the college violated the provisions of the Rights of Persons with Disabilities Act 2016. But the Commission refused to grant the relief in favour of the 1st respondent holding that the turn of locomotor disabled had not yet arisen in the College. Thereafter the 1st respondent approached this Court by filing the above writ petition.

4. During the pendency of the writ petition, the 7th respondent resigned from service. Noting the submission of the learned counsel appearing for the appellant, the learned Single Judge passed an interim order dated 31.10.2023 wherein the 1st respondent was granted liberty to apply for the vacancy that will be notified for physically disabled persons by the appellant. Subsequently, the learned single judge passed an interim order dated 21.01.2025 directing the appellant to defer appointment to the post of Office Attendant notified in Ext.P24, pending disposal of the writ petition. By the order dated 30.01.2025, it was clarified

by the learned Single Judge that the interim direction granted as per order dated 21.01.2025 will be confined only to the post reserved for differently abled candidates. Thereafter, the appellant filed I.A. No.6 of 2025 to modify the interim order dated 21.01.2025 in which the impugned order was passed by the learned Single Judge.

5. Heard the learned Senior Counsel for the appellant/6th respondent in the writ petition, the learned counsel for respondent No.1/writ petitioner and the learned Senior Government Pleader appearing for respondents 2 to 6.

6. The learned Senior Counsel for the appellant would submit that the interim order dated 21.01.2025 was obtained by the 1st respondent suppressing Ext.R6(d) order of the Government dated 01.10.2023, where the category of low vision was found to be suitable for Office Attendant. Though this fact was brought to the notice of the learned Single Judge, the interim order was modified confining the same to the post of Office Attendant in the disabled category as per the order dated 30.01.2025. Subsequently, the appellant filed I.A. No.6 of 2025 seeking permission to fill up the post of Office Attendant earmarked for the physically disabled

category. But, the learned Single Judge passed the impugned order refusing to vacate the interim order dated 21.01.2025. Therefore, the interim order dated 21.01.2025 itself has to be vacated.

7. The learned counsel for the 1st respondent submitted that Ext.R6(d) order was passed during the pendency of the writ petition. While passing the impugned order dated 03.03.2025 the learned Single Judge has taken into consideration Ext.R6(d) and rightly refused to vacate the interim order dated 21.01.2025. Hence no interference is needed to the impugned order.

8. Annexure-I order dated 31.10.2023 was passed by the learned Single Judge granting liberty to the 1st respondent to apply for the post of Office Attendant, without prejudice to his contentions in the writ petition, noting the submission of the learned counsel for the appellant that the College will be notifying vacancy for physically disabled persons by a fresh notification. Thereafter, Annexure II order dated 21.01.2025 was passed by the learned Single Judge noting that in Ext.P2, appointment of visually impaired is not allowed to the post of Office Attendant and Ext.P24 notification attempts to fill up the post of Office Attendant

by appointing visually impaired. In that circumstance an interim order directing the appellant to defer appointment to the post of Office Attendant notified in Ext.P24 pending disposal of the writ petition was passed by the learned Single Judge. Subsequently, by the order dated 30.01.2025, it was clarified that the interim direction dated 21.01.2025 will be confined only to the post reserved for differently abled candidates. Meanwhile, the appellant produced Ext.R6(d) Government Order dated 01.10.2023 making low-vision candidates also suitable for the post of Office Attendant. Now the appellant contends that Ext.R6(d) was not brought to the notice of the learned Single Judge while passing the interim order dated 21.01.2025. But, from the impugned order dated 03.03.2025, we notice that while passing that order, the learned Single Judge considered Ext.R6(d) order also and refused to vacate the interim order dated 21.01.2025 for the reason that if the appellant had notified the vacancies for physically disabled candidates at the initial instance itself, the 1st respondent would have been eligible for consideration under the PWD quota. Therefore, it is clear that the learned Single Judge passed the impugned order dated 03.03.2025 after considering Ext.R6(d)

order also.

9. From the submissions made at the Bar and also from the impugned order, we notice that the pleadings in the writ petition are complete and the case was directed to be posted for final hearing. The contentions raised by the 1st respondent-writ petitioner need a detailed consideration that can be decided only in the final hearing of the writ petition. The permission if granted to the appellant to proceed with the selection as notified under Ext.P24, the same will adversely affect the interest of the 1st respondent. In such circumstances, we find no ground to interfere with the impugned order of the learned Single Judge.

In the result, the writ appeal stands dismissed, making it clear that we have not expressed anything regarding the merits of the legal and factual contentions raised by the parties in the writ petition.

Sd/-

ANIL K.NARENDRAN, JUDGE

Sd/-
MURALEE KRISHNA S., JUDGE

sks

APPENDIX OF WA 474/2025

PETITIONER ANNEXURES

Annexure I	**TRUE COPY OF THE INTERIM ORDER DATED 31.10.2023 IN W.P.(C) NO. 1927/2023 PASSED BY THIS HON'BLE COURT**
Annexure II	**TRUE COPY OF THE INTERIM ORDER DATED 21.1.2025 IN W.P. (C) NO. 1927/2023 PASSED BY THIS HON'BLE COURT**
Annexure III	**TRUE COPY OF THE INTERIM ORDER DATED 30.1.2025 IN W.P.(C)NO. 1927/2023 PASSED BY THIS HON'BLE COURT**
Annexure IV	**TRUE COPY OF THE RANK LIST PUBLISHED FOR CANDIDATES WITH DISABILITY DATED NIL.**