

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&**

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

OP(KAT).No. 267 of 2015 (Z)

**AGAINST THE JUDGMENT IN OA 997/2015 of KERALA ADMINISTRATIVETRIBUNAL,
THIRUVANANTHAPURAM DATED 23-07-2015**

PETITIONER(S):

**DR.S.SIVAPRASAD AGED 45 YEARS
S/O SUKUMARAN
ASSOCIATE PROFESSOR OF GENERAL SURGERY
MEDICAL COLLEGE, THIRUVANANTHAPURAM
RESIDING AT VIMCOHANA, POTHENCODE PO
THIRUVANANTHAPURAM DISTRICTKERALA**

**BY ADVS.SRI.D.SAJEEV
SMT.LIGEY ANTONY**

RESPONDENT(S):

- 1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO
GOVERNMENTHEALTH& FAMILY WELFARE(B)
DEPARTMENTGOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM695 001**
- 2. THE DIRECTOR OF MEDICAL EDUCATION
GOVERNMENT OF KERALA
DIRECTORATE OF MEDICAL EDUCATION, MEDICAL COLLEGE PO
THIRUVANANTHAPURAM 695 001**
- 3. THE PRINCIPAL
GOVERNMENT MEDICAL COLLEGE, MEDICAL COLLEGE PO
THIRUVANANTHAPURAM 695 001
KERALA ADMINISTRATIVETRIBUNAL
THIRUVANANTHAPURAM 695 035**

R BY GOVERNMENT PLEADER SRI.M.MOHAMMED SHAFI

**THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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OP(KAT).No. 267 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P 1: TRUE COPY OF ORDER DT. 23/7/15 IN OA NO 997/15 ON THE FILE OF
THE HON'BLE KERALA ADMINISTRATIVE TRIBUNAL
THIRUVANANTHAPURAM

EXT.P2: TRUE COPY OF THE MEMORANDUM OF OA NO 997/15 FILED BY THE
PETITIONER BEOFORE THE HON'BLE KERALA STATE
ADMINISTRATIVE TRIBUNAL AT THIRUVANANTHAPURAM

EXT.P3: TRUR COPY OF THE ORDER NO. GO (RT) NO. 2206/15/H & FWD DT.
14/7/15 THE 1ST RESPONDENT

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

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**P.R.RAMACHANDRA MENON
&
BABU MATHEW P.JOSEPH, JJ**

O.P.(KAT) No.267 of 2015

Dated this the 5th day of August, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J

The delay in finalizing the disciplinary proceedings initiated against the appellant herein, in the year 2010, giving way to promotion of the juniors, was sought to be intercepted by filing the original application with the following prayers:-

- "i). To call for the records which leads to the passing of Exhibit P1 Order.*
- ii). To issue a writ of Mandamus or any other appropriate writ, order or direction commanding the respondents 1 and 2 to promote the petitioner in the Post of Cadre Professor in the Department of General Surgery as expeditiously as possible.*
- iii). To issue a writ of Mandamus or any other appropriate writ, order or direction commanding the 2nd respondent to finalise the disciplinary proceedings initiated vide Annexures A3,A7 and A8 respectively, forthwith, at any rate within one month since it is a long pending one and affects the seniority and promotion of the petitioner.*
- iv) To grant such other reliefs, as deemed fit to be granted by this Hon'ble Court in the facts and circumstances of the above case.*

2. The matter was considered by the Tribunal, and the O.A, was disposed of, directing the competent authority to finalize the disciplinary proceedings within 'four months'. This is sought to be intercepted seeking to have the matter finalized within 'one month', contending that the delay is quite adversely affecting the rights and interests of the petitioner.

3. The petitioner is working as an Associate Professor in General Surgery and the next promotion is to the post of Professor. The petitioner is stated as duly qualified in all respects. In the meanwhile, some disciplinary proceedings were initiated against the petitioner, allegedly on false and frivolous grounds, stating that the petitioner was instrumental in delaying the release of a dead body on 29.9.2010. He was caused to be suspended as per Annexure A2 order dated 30.1.2010 pending enquiry. Another charge memo was issued to the petitioner in the year 2012, based on some news appeared in a News Channel that the petitioner was pursuing 'private practice'. It is stated that the petitioner has given a proper explanation in respect of both the charges.

4. In respect of the 1st charge, it is contended that, on the particular day and time, the petitioner was not in duty as the duty was already over and hence he was not in charge of the unit. In respect of the 2nd charge, it is stated that the 'video clipping' was taken much earlier, when private practice was permitted by the State, which came to be prevented only subsequently. In any view

of the matter, there was absolutely no reason for protracting the disciplinary proceedings and virtually 4 to 5 years have lapsed, adversely affecting the rights and interest of the petitioner in different ways and means. By virtue of the course of events, the chance to be considered for appointment to the post of Professor, by way of promotion, has been stalled, whereas the juniors have been considered and many of them have now been promoted as per Ext.P3, who include students of the petitioner as well.

5. The learned Government Pleader submits that the version of the petitioner that he was not on duty on the relevant date, leading to the 1st charge with reference to the delay in releasing the dead body, is not correct and that the factual position is discernible from the relevant records. The version of the petitioner with regard to the second charge is also sought to be rebutted by the learned Government Pleader. It is stated that earnest efforts are being taken to finalize the disciplinary proceedings at the earliest and that the same will be finalized in terms of the directions already given by the Tribunal.

6. In the above circumstance, this Court finds that there is nothing wrong or irregular on the part of the Tribunal so as to call for interference by this Court. The disciplinary proceedings against the petitioner shall be finalized in accordance with law, at the earliest. It is made clear that no extension of time will be granted under any circumstance. The claim of the petitioner for the

promotion to the post of Professor will depend upon the outcome of the proceedings as above. It is also made clear that we have not expressed anything with regard to the merits of the case. The O.P stands disposed of as above.

**Sd/-
P.R.RAMACHANDRA MENON
JUDGE**

**Sd/-
BABU MATHEW P. JOSEPH
JUDGE**

//TRUE COPY//

PA TO JUDGE

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