

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYASHTA, 1937

WA.No. 500 of 2015 IN WP(C).23152/2014

AGAINST THE JUDGMENT IN WP(C) 23152/2014 DATED 30/01/2015

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APPELLANT/PETITIONER :

M.P. RAMESH, AGED 55 YEARS
SAFETY INSPECTOR, FIRE SERVICE, CPT STAFF NO.4229
COCHIN PORT TRUST, WILLINGDON ISLAND
COCHIN AND RESIDING AT QUARTER NO. M5/2 SEAGULL STREET
BEHIND CASINO HOTEL, WILLINGDON ISLAND, COCHIN.

BY ADVS.SRI.RAJESH NAIR
SRI.BIJOY CHANDRAN

RESPONDENTS/RESPONDENTS :

1. COCHIN PORT TRUST
REPRESENTED BY ITS CHAIRMAN, WILLINGDON ISLAND
COCHIN.
2. DEPUTY CONSERVATOR, COCHIN PORT TRUST, COCHIN, PIN:682009.
3. CHIEF FIRE CUM ASSISTANT SAFETY POLLUTION CONTROL OFFICER
FIRE SAFETY DEPARTMENT, COCHIN PORT TRUST, COCHIN
PIN:682 009.
4. FIRE OFFICER
FIRE SAFETY DEPARTMENT, COCHIN PORT TRUST, COCHIN
PIN:682009.
5. DEPARTMENTAL PROMOTION COMMITTEE,
COCHIN PORT TRUST, REPRESENTED BY ITS CHAIRMAN, COCHIN
PIN:682009.
6. B.RADHAKRISHNAN NAIR,
PUSHPANJALI HOUSE, VADUTHALA JETTY P.O., AROOKUTTY
CHERTHALA, ALLEPPEY DISTRICT, PIN:688 538.

7. T.P.KRISHNAMURARI
PERMANENTLY RESIDING AT THEKKE VELIYIL HOUSE
VADUTHALA JETTY P.O, AROOKUTTY, CHERTHALA
ALLEPPEY DISTRICT, PIN:688538.
 8. NISHA KRISHNAKUMARI
W/O T.P.KRISHNAMURARI
PERMANENTLY RESIDING AT THEKKE VELIYIL HOUSE
VADUTHALA JETTY P.O., AROOKUTTY, CHERTHALA
ALLEPPEY DISTRICT, PIN:688 538.
 9. BIBIN MATHEN
FIRE OFFICER, FIRE SAFETY DEPARTMENT
COCHIN PORT TRUST, COCHIN, PIN:682 009
RESIDING AT QUARTERS NO.N4/1
NEAR COCHIN PORT FIRE SERVICE, WILLINGDON ISLAND
COCHIN.
- R1 TO R5 BY ADV. SRI.K.ANAND (SR.)
SMT.LATHA KRISHNAN
- R6 & R9 BY SRI.P.MARTIN JOSE
R7 & R8 BY SRI.V.PREMCHAND

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 22-05-2015,
ALONG WITH WA NOS.501/2015 AND 502/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.A. Nos. 500, 501 & 502 OF 2015

Dated this the 22nd day of May, 2015

JUDGMENT

Ashok Bhushan, C.J.

W.A. Nos.500 & 502 of 2015 have been filed by one M.P.Ramesh and W.A. No.501 of 2015 has been filed by One Sunil Kumar K.C. against the common judgment dated 31.01.2015 in three writ petitions, W.P.(C) Nos.23152, 23450 and 26712 of 2014. the appellant in W.A. Nos.500 & 502 of 2015 has been working as Safety Inspector in the Fire Department with the 1st respondent for the last 16 years. His next promotion post is the 'Chief Fire cum Assistant Safety/Pollution Control Officer', on which post vacancy arose on 30.09.2014. Certain allegations have been made against the 6th respondent in W.P.(C) No.23152 of 2014 who was the review officer. W.P.(C) No.23152 of 2014 was filed seeking a direction to promote the petitioner to the post of Chief Fire cum Assistant Safety/Pollution Control Officer. In W.P.(C) No.26712 of 2014 there was an additional prayer, apart from seeking promotion, challenge was to the alleged handing over

charge to the 5th respondent(Sri.Bibin Mathen). Sri.Sunil Kumar K.C., who was working as Fireman, has filed W.P.(C) No.23450 of 2014 challenging the disciplinary proceedings.

2. Learned Single Judge heard all the three writ petitions together and issued following directions in all the three writ petitions :

"4. xx xx xx xx

Considering the facts and circumstances, there shall be a direction to the first respondent to consider the petitioner in W.P.(C) Nos.23152 and 26712 of 2014 for promotion to the post of Chief Fire cum Assistant Safety Pollution Control Officer after convening DPC within a period of five months. Sri.M.P. Ramesh shall be considered for the promotion in accordance with law and his eligibility. So far as W.P.(C) No.267712 of 2014 is concerned, it is admitted that the 5th respondent has already been put in charge till promotion is effected. In view of the direction that promotion shall be effected within a period of five months, I do not find any other further direction is required in the matter. It is the wisdom of the employer to entrust any other employee to officiate the post by making temporary arrangement. This Court cannot interfere with such decision of the employer. Therefore, petitioner's prayer in W.P.(C) No.26712 of 2014 to interfere with handing over the charge of Chief Fire cum

Assistant Safety/Pollution Control Officer to the 5th respondent is declined.”

3. In the appeals filed by Sri.M.P.Ramesh the grievance raised was that the appellant apprehends that though the promotion exercise for filling the post is to be completed by 30.06.2015, the appellant may not be considered for promotion. Along with I.A. No.614 of 2015, the appellant brought on record the findings of the enquiry officer dated 17.04.2015 in the disciplinary enquiry which was initiated against the appellant. He submits that enquiry officer has already recorded findings on all the three articles of charges that they are not proved. In spite of that he apprehends that due to one or other reason he would be denied consideration for promotion, for which post he is the only candidate eligible.

4. Learned counsel for the Cochin Port Trust submits that under the orders of learned Single Judge, the Port Trust has to complete the process for promotion by 30.06.2015. He further submits that the cause of action arises only when the appellant is not considered for promotion. He further submits that the report

of the enquiry officer dated 17.04.2015 is concerned, the disciplinary authority has issued some notice with regard to one or two findings of the enquiry officer. In so far as W.A. No.501 is concerned, the learned Single Judge directed to complete the disciplinary proceedings.

5. We do not see any ground to interfere with the said directions and order of the learned Single Judge. In that context it has to be confirmed. As far as the handing over charge is concerned, till promotion is effected, that eventuality has already taken place and 5th respondent in W.P.(C) No. 26712 of 2014 is already performing the duties till the promotion is effected. We do not find any error in the observation made by learned Single Judge. No direction is required in the matter of handing over charges. The learned Single Judge has already issued directions for concluding the proceedings, holding the charge of 5th respondent. It is only a temporary arrangement in which no interference is needed under the writ proceedings. The order passed by learned Single Judge in W.P.(C) No. 26712 of 2014 and also W.P.(C) No. 23152 of 2014 is concerned, we are of the

view that in the facts and circumstances of the case especially materials which have been brought on the record in the Writ Appeal and further the submission made by learned Standing Counsel for the Port Trust that the promotion process is to be completed by 30.06.2015. We are of the view that the appellant in W.A. Nos.500 & 502 of 2015 shall also be considered for promotion to the post of Chief Fire cum Assistant Safety/Pollution Control Officer as per the procedure prescribed by law irrespective of the fact that whether the enquiry, which is said to be pending by issuance of notice by the disciplinary authority, is finalised or not. The directions by learned Single Judge in W.P. (C) No.23152 of 2014 is modified to the above extent.

All the three Writ Appeals are disposed of accordingly.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**