

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

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

**THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937**

**WA.No. 2463 of 2015 ()**

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AGAINST THE JUDGMENT IN WP(C).NO. 32100/2014 DATED 29-01-2015  
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**APPELLANT/11TH RESPONDENT :**

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JULIENT JOSEPH,  
EXECUTIVE ENGINEER, KERALA WATER AUTHORITY  
JNNRUM PROJECT CIRCLE, PIN-682011.**

**BY SENIOR ADVOCATE SRI.N.N.SUGUNAPALAN  
BY ADV. SRI.S.SUJIN**

**RESPONDENTS/1ST PETITIONER/RESPONDENTS 1 TO 10 AND 12 :**

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- 1. K.V. PRASANNA,  
EXECUTIVE ENGINEER (HG), PH CIRCLE  
KERALA WATER AUTHORITY, KOCHI.**
  - 2. STATE OF KERALA,  
REPRESENTED BY THE SECRETARY TO GOVERNMENT  
WATER RESOURCES (WATER SUPPLY-B) DEPARTMENT  
SECRETARIAT, THIRUVANANTHAPURAM-695001.**
  - 3. KERALA WATER AUTHORITY,  
JALA BHAVAN, VELLAYAMBALAM,  
THIRUVANANTHAPURAM-695033  
REPRESENTED BY ITS MANAGING DIRECTOR.**
  - 4. THE DEPARMENTAL PROMOTION COMMITTEE,  
FOR PROMOTION TO THE CATEGORY OF SUPERINTENDING ENGINEER  
KERALA WATER AUTHORITY, THIRUVANANTHAPURAM-695033  
REPRESENTED BY ITS CONVENOR, MANAGING DIRECTOR  
KERALA WATER AUTHORITY.**
  - 5. RAGHU PRASAD P.K.,  
SUPERINTENDING ENGINEER, PH CIRCLE  
KERALA WATER AUTHORITY, ALAPPUZHA-688001.**

6. ZEENATH BEEGUM,  
DEPUTY CHIEF ENGINEER (WORKS NORTH)  
OFFICE OF THE MANAGING DIRECTOR, JALABHAVAN  
VELLAYAMBALAM, THIRUVANANTHAPURAM-695033.
7. S.HARIS,  
SUPERINTENDING ENGINEER, KERALA WATER AUTHORITY  
JENURAM PROJECT CIRCLE, KOCHI-682011.
8. K.MUHAMMED SABU,  
KERALA WATER AUTHORITY, SUPERINTENDING ENGINEER  
OFFICE OF THE CHIEF ENGINEER (NORTH)  
KOZHIKODE-673001.
9. ALEX KURIAKOSE,  
SUPERINTENDING ENGINEER, KERALA WATER AUTHORITY  
P.H.CIRCLE, MOOVATTUPUZHA-686661.
10. V.G.REKHA,  
SUPERINTENDING ENGINEER, KERALA WATER AUTHORITY  
VASCON, THIRUVANANTHAPURAM-695001.
11. A.VIJAYAM,  
EXECUTIVE ENGINEER, KERALA WATER AUTHORITY  
QUALITY CONTROL DIVISION, THIRUVANANTHAPURAM-695001.
12. P.N.SWAMINATHAN,  
EXECUTIVE ENGINEER, KERALA WATER AUTHORITY  
PROJECT DIVISION, ADOOR-689645.

R1 BY ADV. SRI.K.B.GANGESH  
R2 BY SR. GOVT. PLEADER SRI.C.R. SYAMKUMAR  
R3 & R4 BY ADV. SRI.GEORGE MATHEW, SC  
R7 & R9 BY ADV. SRI.S.RADHAKRISHNAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 26-11-2015,  
ALONG WITH WA. 2464/2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:

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**ASHOK BHUSHAN, C.J.**

**&**

**A.M. SHAFFIQUE, J.**

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W.A. Nos. 2463 & 2464 of 2015

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Dated this, the 26<sup>th</sup> day of November, 2015

## **J U D G M E N T**

**Ashok Bhushan, C.J.**

These two writ appeals have been filed against a common judgment dated 29<sup>th</sup> January, 2015 in WP(C) Nos.30577 and 32100/2014. It shall be sufficient to refer to the facts in WP(C) No.30577/2014 for deciding both the writ appeals. Parties shall be referred to as referred to in the writ petition.

2. Writ petitioners as well as private respondents were working as Executive Engineer and were eligible for consideration for promotion as Superintending Engineer. Certain vigilance enquiry were recommended against the petitioners and the vigilance report was forwarded in the year 2005. But even after lapse of more than thirteen years, no final outcome could come out of the said enquiry. The juniors to the petitioners, who are arrayed as respondents, were granted promotion to the post of Superintending Engineer whereas petitioners were not considered

at that time on account of pending vigilance enquiry. Writ petition was filed by the petitioner in WP(C) No.30577/14 for quashing Exts.P2 and P3 orders and for directing promotion of respondents 4 to 10 in preference to the petitioner to the category of Superintending Engineer. Following were the prayers made in WP (C) No.30577/14.

*"i) issue a writ of certiorari or any other appropriate writ, direction or order to call for the records leading to Ext.P2 and P3 and quashing the same to the extent it direct promotion of respondents 4 to 10 in preference to the petitioner to the category of Superintending Engineer.*

*ii) issue a writ of mandamus or any other appropriate writ, direction or order asking the respondents to include the petitioner in Ext.P2 as well as in the select list prepared by the DPC for promotion to the category of Superintending Engineer in preference to respondents 4 to 10.*

*iii) issue a writ of mandamus or any other appropriate writ, direction or order directing respondents 1 and 2 to promote the petitioner in the category of Superintending Engineer in preference to respondents 4 to 10.*

*iv) issue a writ of mandamus or any other appropriate writ, direction or order declaring that the Vigilance enquiry initiated against the petitioner should not be proceeded with and that charge*

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*memos Ext.P8 framed against the petitioner is illegal and invalid and no proceedings against her on the basis of that shall be continued."*

3. Learned Single Judge heard the writ petitions and by the impugned judgment held that delay in the case in initiating enquiry by the Vigilance Tribunal cannot be put an embargo on the legitimate right of the employee to claim for promotion. Learned Single Judge has directed to convene an *ad hoc* Departmental Promotion Committee within a period of two months and notwithstanding any impending enquiry, petitioners were directed to be considered for promotion to the post of Superintending Engineer in accordance with law. It was further directed that at the time of promotion, they shall be given appropriate seniority in the promotion cadre of Superintending Engineer in preference to the juniors who have been promoted earlier. Only one person viz., Juliat Joseph has filed appeals challenging the judgment in both the writ petitions.

4. Sri.N.N.Sugunapalan, learned senior counsel appearing for the appellant contended that appellant can have no objection regarding consideration of the writ petitioners for promotion.

However, they cannot be permitted to take seniority over the appellant. It is submitted that the criteria for promotion was not seniority and the appellant was promoted according to the criteria applicable by Departmental Promotion Committee. Hence, the writ petitioners cannot be directed to be given seniority. This submission is refuted by the learned counsel appearing for the writ petitioners. It is contended that the writ petitioners were not considered on account of pendency of the vigilance enquiry at the time when the appellant was promoted. Hence the present is not a case where it can be held that appellant was more meritorious than the petitioners and the petitioners were bypassed on account of them having not been found fit. Admittedly, the petitioners were not considered for promotion when juniors were promoted. We, thus, are of the view that direction of the learned Single Judge to consider the writ petitioners for promotion and place them at their appropriate place according to seniority has rendered substantial justice. Writ petitioners were clearly entitled for fixation of proforma seniority in the facts of the present case when they were not earlier considered due to vigilance enquiry. Learned Single Judge has rightly directed for promotion since the

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vigilance enquiry, where report was submitted in 2005, have not been finalised and the enquiry has never culminated into a disciplinary proceedings against the writ petitioners. It has further been brought to our notice that the 1<sup>st</sup> respondent in WA No.2464/15 has already been promoted and the 1<sup>st</sup> respondent in WA No.2463/15 has already attained superannuation.

Be that as it may, we do not find any error in the direction issued by the learned Single Judge. Hence, both the writ appeals are dismissed.

Sd/-  
**ASHOK BHUSHAN, CHIEF JUSTICE**

Sd/-  
**A.M. SHAFFIQUE, JUDGE**

Rp26/11/2015

*//True Copy//*

*PS to Judge*