

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

WP(C).No. 15252 of 2014 (F)

PETITIONER(S):

**SAJU C. VARGHESE,
ASSISTANT EXECUTIVE ENGINEER, SEWERAGE SUB DIVISION,
KERALA WATER AUTHORITY, PATTOOR, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.K.SASIKUMAR
SRI.R.ROHITH**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
WATER RESOURCES (WATER SUPPLY B) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 2. DIRECTOR,
VIGILANCE AND ANTI CORRUPTION BUREAU,
THIRUVANANTHAPURAM.**
- 3. KERALA WATER AUTHORITY,
REPRESENTED BY THE MANAGING DIRECTOR, JALABHAVAN,
THIRUVANANTHAPURAM -695 033.**

**R1 & R2 BY GOVERNMENT PLEADER SMT.LOWSY A.
R3 BY SRI.JOSEPH JOHN, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1- A TRUE COPY OF THE ENQUIRY REPORT DATED 12/97.

**EXHIBIT-P2- A TRUE COPY OF THE REPORT DATED 22/04/1999 FORWARDED BY THE
SUPERINTENDENT OF POLICE, VACB, THIRUVANANTHAPURAM.**

**EXHIBIT-P3- A TRUE COPY OF THE LEGAL OPINION DATED 06/07/1999 ISSUED BY
THE LEGAL ADVISOR OF THE VIGILANCE DEPARTMENT.**

EXHIBIT-P4- A TRUE COPY OF THE REPORT DATED 05/10/1999.

**EXHIBIT-P5- A TRUE COPY OF THE LETTER DATED 04/12/2000 FORWARDED BY THE
2ND RESPONDENT TO THE ADDL. CHIEF SECRETARY TO GOVERNMENT,
VIGILANCE DEPARTMENT.**

**EXHIBIT-P6- A TRUE COPY OF THE LETTER DATED 25/09/2001 FORWARDED BY THE
3RD RESPONDENT TO THE IRRIGATION SECRETARY.**

**EXHIBIT-P7- A TRUE COPY OF THE MEMO OF CHARGES AND STATEMENT OF
ALLEGATION DATED 18/09/2001 ISSUED TO THE PETITIONER BY THE
MANAGING DIRECTOR.**

**EXHIBIT-P8- A TRUE COPY OF THE WRITTEN STATEMENT OF DEFENCE FILED BY
THE PETITIONER TO EXHIBIT-P7 CHARGES.**

**EXHIBIT-P9- A TRUE COPY OF THE WRITTEN STATEMENT SUBMITTED FOLLOWING
EXHIBIT-P8.**

**EXHIBIT-P10- A TRUE COPY OF THE LETTER DATED 16/12/2002 FORWARDED BY THE
CHIEF ENGINEER (SR) KERALA WATER AUTHORITY TO THE MANAGING
DIRECTOR.**

**EXHIBIT-P11- A TRUE COPY OF THE LETTER DATED 04/07/2003 FORWARDED BY THE
3RD RESPONDENT TO THE 1ST RESPONDENT.**

**EXHIBIT-P12- A TRUE COPY OF THE LETTER DATED 27/03/2008 FORWARDED BY THE
SECRETARY TO GOVERNMENT, WATER RESOURCES DEPARTMENT.**

**EXHIBIT-P13- A TRUE COPY OF THE LETTER DATED 19/05/2008 FORWARDED BY THE
3RD RESPONDENT TO THE SPECIAL SECRETARY TO GOVERNMENT,
WATER RESOURCES DEPARTMENT.**

**EXHIBIT-P14- A TRUE COPY OF THE LETTER DATED 01/09/2008 FORWARDED BY THE
SPECIAL SECRETARY TO GOVERNMENT, WATER RESOURCES
DEPARTMENT TO THE MANAGING DIRECTOR, KERALA WATER
AUTHORITY.**

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EXHIBIT-P15- A TRUE COPY OF THE LETTER DATED 13/10/2008 TO THE SPECIAL SECRETARY TO GOVERNMENT.

EXHIBIT-P16- A TRUE COPY OF THE LETTER DATED 20/01/2009 FORWARDED BY THE ADDITIONAL CHIEF SECRETARY, WATER RESOURCES DEPARTMENT TO THE 3RD RESPONDENT.

EXHIBIT-P17- A TRUE COPY OF THE LETTER DATED 11/03/2009 FORWARDED BY THE MANAGING DIRECTOR TO THE ADDITIONAL CHIEF SECRETARY, WATER RESOURCES DEPARTMENT.

EXHIBIT-P18- A TRUE COPY OF THE LETTER DATED 29/07/2009 FORWARDED BY THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT TO THE MANAGING DIRECTOR.

EXHIBIT-P19- A TRUE COPY OF THE LETTER DATED 12/10/2009 FROM THE MANAGING DIRECTOR TO THE ADDITIONAL CHIEF SECRETARY, WATER RESOURCES DEPARTMENT.

EXHIBIT-P20- A TRUE COPY OF THE LETTER DATED 03/12/2009 FORWARDED BY THE SECRETARY TO GOVERNMENT TO THE MANAGING DIRECTOR.

EXHIBIT-P21- A TRUE COPY OF THE LETTER DATED 09/07/2010 FORWARDED BY THE MANAGING DIRECTOR TO THE SECRETARY TO GOVERNMENT, WATER RESOURCES DEPARTMENT.

EXHIBIT-P22- A TRUE COPY OF THE DECISION TAKEN BY THE KERALA WATER AUTHORITY BOARD IN THE 318TH MEETING DATED 05/02/2009.

EXHIBIT-P23- A TRUE COPY OF THE DECISION BY THE KERALA WATER AUTHORITY BOARD IN THE 327TH MEETING DATED 30/10/2009.

EXHIBIT-P24- A TRUE COPY OF THE LETTER DATED 16/12/2011 FORWARDED BY THE MANAGING DIRECTOR TO THE SECRETARY TO GOVERNMENT, WATER RESOURCES DEPARTMENT.

EXHIBIT-P25- A TRUE COPY OF THE LETTER DATED 07/04/2014 FOWARDED BY THE MANAGING DIRECTOR TO THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT.

EXHIBIT-P26- A TRUE COPY OF THE LETTER DATED 28/04/2014 FORWARDED FROM THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT, WATER RESOURCES DEPARTMENT TO THE MANAGING DIRECTOR OF KERALA WATER AUTHORITY.

EXHIBIT-P27- A TRUE COPY OF THE CIRCULAR DATED 13/05/2014 ISSUED BY THE KERALA WATER AUTHORITY.

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RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.15252 of 2014

Dated this the 22nd day of January, 2015

JUDGMENT

The petitioner is presently working as Assistant Executive Engineer under the Kerala Water Authority. The petitioner joined in the service as Assistant Engineer. During his tenure as Assistant Engineer, there was a departmental proceedings against him on account of unauthorised stock of pipes in the premises of the one contractor. In Ext.P1 enquiry report, the following findings are made:

- “1. The pipes found out from the premises of Lisson.K. George, Ammakandakara, Adoor are not stolen pipes.
2. (a)Some of the pipes belong to Sri.Padmanabhan Nanoo, contractor who has kept the same for returning to division store as per instruction of Asst. Engineer after completing

stabilization work.

- (b) The unserviceable pipe belong to Lisson K.George himself who has obtained the same in public auction from Asst. Engineer, W.S.Section vide file 32/86/WB6A/dt.11.8.1997 after remitting the sale deed price of Rs.347/-.

Hence there is no lapse on the part of any officer of the Kerala Water Authority in connection with the matter and so no action is to be initiated against any body.”

2. In the meanwhile, in a parallel proceedings of the Vigilance Department, it was observed as follows:

“Since the source of the pipes cannot be established beyond doubt there is no scope for registering a case.”

3. However, the Investigating Officer recommended for an enquiry by way of Vigilance Tribunal. It is to be noted that Ext.P1 enquiry report was in the year 1997 and Ext.P2 report

was in the year 1999. Exts.P3 and P4 are the opinion of the Legal Advisor of the Vigilance Department. After adverting to the relevant materials, the Legal Advisor also formed an opinion that there is a dearth of sufficient materials to lay any charge and it is not possible to frame charge based on the findings of the reports. These reports were also of the year 1999. In the meanwhile, by Ex.P13, the Managing Director of the Water Authority requested the Government that since there is no loss to the Kerala Water Authority, enquiry by the Enquiry Tribunal may be dropped. It is to be noted that in an earlier occasion also the Managing Director of the Water Authority made a request in the year 2003 to drop the enquiry by the Enquiry Tribunal. It seems, the matter was taken up by the Water Authority time and again and the Government did not make up their mind whether to proceed with the enquiry by the Tribunal or not. In the meanwhile,

final seniority list of the Assistant Executive Engineer under the degree quota was published on 1.1.2014, in which, the petitioner's name also has been included. Based on the preparation of the seniority list, the Managing Director requested the Government whether pendency of an enquiry by the Enquiry Tribunal is a bar to consider the promotion of the petitioner. In the request, it is highlighted that the Water Authority had not sustained any loss and no liability is reported and the case is pending more than 12 years. The Managing Director of the Water Authority made his request in the light of the decision of the Board in its meeting and the resolution as per Ext.P23. This was replied by the Additional Chief Secretary to the Government by Ext.P26 as follows:

“I am to invite your attention to the reference cited and inform that proposal for promoting Shri.Saju C.Varghese to the post of Executive Engineer in Kerala Water Authority

cannot be agreed to since this Department has already recommended to Vigilance Department to conduct Vigilance Tribunal Enquiry. You are also requested to clarify how Shri.Saju C.Varghese has been proposed for inclusion in the select list of Executive Engineer along with copies of DPC decision, before knowing about Government's decision on Vigilance Tribunal Enquiry."

4. On account of this, by Ext.P26, the petitioner was not promoted, the petitioner submits that five of his juniors in the list were promoted. It is challenging Ext.P26, the petitioner has filed this writ petition.

5. It is to be noted, the Water Authority claims that they have not suffered any loss. It is also to be noted that after adverting to the relevant materials, the departmental enquiry and the Investigating Officer also have come to the opinion that there is no sufficient materials to proceed

against the petitioner. No doubt, the wisdom of the Government to have an enquiry by the Tribunal, cannot be interfered at this stage. However, the recommendation for enquiry by the Vigilance Tribunal has been made in the year 1999 and no action has been taken to initiate the enquiry by the Vigilance Tribunal even after lapse of 15 years. Undue delay in the matter, necessarily, cannot place an embargo to decline the promotion to the petitioner. This Court and the Hon'ble Supreme Court in several judgments held that undue delay in initiating proceeding against an employee shall not stand adverse to the employee concerned in claiming his legitimate rights under the service. There is inordinate delay in this matter in initiating and concluding the proceedings by the Tribunal. Therefore, I am of the view that the petitioner's promotion shall not be denied on account of the pendency of any enquiry by the Vigilance Tribunal. In view of the above,

without prejudice to the enquiry being initiated, the petitioner shall be considered for promotion as Executive Engineer in accordance with the seniority in Ext.P27 list. Needful shall be done after convening adhoc DPC within a period of six weeks. The petitioner shall be placed suitably in preference to junior based on such consideration for promotion by the DPC.

The writ petition is disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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