

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).No. 23152 of 2014 (T)

PETITIONER(S):

**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**

RESPONDENT(S):

- 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-682009.**
- 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.**

*** ADDL.R6 TO R9 IMPEADED**

- 6. B.RADHAKRISHNAN NAIR
PUSHPANJALI HOUSE, VADUTHALA JETTY.P.O., AROOKUTTY
CHERTHALA, ALLEPPEY DISTRICT, PIN - 688 538.**

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WP(C).No. 23152 of 2014 (T)

7. T.P.KRISHNAMURARI
PERMANENTLY RESIDING AT THEKKE VELIYIL HOUSE
VADUTHALA JETTY.P.O, AROOKUTTY, CHERTHALA
ALLEPPEY DISTRICT, PIN 688 538.

8. NISHA KRISHNAMURARI, W/O.KRISHNAMURARI
PERMANENTLY RESIDING AT THEKKE VELIYIL HOUSE
VADUTHALA JETTY.P.O, AROOKUTTY, CHERTHALA
ALLEPPEY DISTRICT, PIN 688 538.ADDL.

R6 TO R8 ARE IMPEADED AS PER ORDER DATED 26/09/2014 IN IA
13065/2014.

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.

ADDL. R9 IS IMPEADED AS PER ORDER DATED 26/09/2014 IN IA 13067/2014.

R1-R3 BY ADVS . SRI.K.ANAND (SR.)
SMT.LATHA KRISHNAN
R6 & 9 BY ADVS. SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.P.PRIJITH
R7 & 8 BY ADVS. SRI.V.PREMCHAND
SRI.V.TEKCHAND

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-01-2015, ALONG WITH WPC. 23450/2014 & WPC. 26712/2014, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1: COPY OF THE DEGREE CERTIFICATE ISSUED BY THE UNIVERSITY OF KERALA IN FAVOUR OF THE PETITIONER.
- P2: COPY OF THE CERTIFICATE ISSUED BY THE NATIONAL FIRE SERVICE COLLEGE, NAGPUR, IN FAVOUR OF THE PETITIONER.
- P3: COPY OF THE RELEVANT SERVICE RECRUITMENT RULES AND REGULATIONS IN FORCE WITH REFERENCE TO THE SELECTION TO THE POST OF CHIEF FIRE CUM ASSISTANT SAFETY POLLUTION CONTROL OFFICER IN THE FIRST RESPONDENT.
- P4: COPY OF THE NOTICE (NO.B2/NOTICE/MPR/2014-D DATED 30TH OF MAY 2014) ISSUED BY THE 2ND RESPONDENT.
- P5: COPY OF THE CONFIDENTIAL REPORT FOR THE PERIOD FROM 01.01.2012 TO 31.12.2012 WITH REFERENCE TO THE PETITIONER.
- P6: COPY OF THE CONFIDENTIAL REPORT FOR THE PERIOD FROM 01.01.2013 TO 31.12.2013 WITH REFERENCE TO THE PETITIONER.
- P7: COPY OF THE COMMON OBJECTION/WRITTEN STATEMENT SUBMITTED BY THE PETITIONER BEFORE THE OFFICE OF THE 2ND RESPONDENT ON 9.6.2014.
- P8: COPY OF THE NOTE (NO.SECY/5/2013/S DATED 20.4.2013) ISSUED BY THE GENERAL ADMINISTRATION DEPARTMENT OF THE FIRST RESPONDENT.
- P9: COPY OF THE ORDER DATED 19.12.2012 ISSUED BY THE PORTS WING, MINISTRY OF SHIPPING, GOVERNMENT OF INDIA.
- P10: COPY OF THE ORDER NO.15-C(3)/68 DATED 17.3.1968 ISSUED BY THE PORTS WING, MINISTRY OF SHIPPING, GOVERNMENT OF INDIA.
- P11: COPY OF THE MEMORANDUM (NO.E1/DISCI/M.P.R.2014-D DATED 21.06.2014) CONTAINING THE ARTICLES OF CHARGES.
- P12: COPY OF THE WRITTEN STATEMENT OF DEFENSE DATED 30.6.14.
- P13: COPY OF THE COMPLAINT DATED 11.6.2014 SUBMITTED BY SMT.NISHA KRISHNAMURARI BEFORE THE 2ND RESPONDENT.
- P14: COPY OF THE COMPLAINT DATED 17.6.2014 SUBMITTED BY SMT.KRISHNAKUMARI BEFORE THE SECOND RESPONDENT.
- P15: COPY OF THE COMPLAINT FILED ON 18.6.2014 BY SMT.NISHA KRISHNAKUMARI BEFORE THE KERALA STATE WOMEN'S COMMISSION.

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WP(C).No. 23152 of 2014 (T)

- P16: COPY OF THE INTIMATION ISSUED FROM THE KERALA STATE WOMEN'S COMMISSION TO THE WIFE OF THE PETITIONER ON 9.8.2014.**
- P17: COPY OF THE ORDER (NO.E1/DISCI/M.P.R. & S.K.C./2014-D DATED 2.8.2014) ISSUED BY THE 2ND RESPONDENT.**
- P18: COPY OF THE ORDER (NO.E1/DISCI/M.P.R. & S.K.C./2014-D DATED 2.8.2014) ISSUED BY THE 2ND RESPONDENT.**
- P19: COPY OF THE ORDER (NO.E1/DISCI/M.P.R. & S.K.C./2014-D DATED 2.8.2014) ISSUED BY THE 2ND RESPONDENT.**
- P20: COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER TO EXT.P19.**
- P21: COPY OF THE ORDER (NO.B2/CR/MPR/2014 DAED 17/9/14) PASSED BY THE R2**
- P22: COPY OF THE DUTIES OF THE PORT FIRE OFFICER AS WELL AS THE ASSISTANT SAFETY INSPECTOR ISSUED BY THE RESPONDENT 1 TO 3**
- P23: COPY OF THE LETTER (NO.C1/RTI/2014-H DATED 27/11/14) ISSUED BY THE CHIEF MEDICAL OFFICER OF THE R1**
- P24: COPY OF THE CPT EMPLOYEES (RECRUITMENT, SENIORITY AND PROMOTION) REGULATIONS, 2010**
- P25: COPY OF THE COCHIN PORT EMPLOYEES (CONDUCT) REGULATIONS.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

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A.MUHAMED MUSTAQUE, J.
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W.P(C).Nos.23152, 23450 and 26712 of 2014
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Dated this the 30th day of January, 2015

JUDGMENT

W.P(C).Nos.23152 and 26712 of 2014 are filed by one M.P.Ramesh who is working as Safety Inspector under the Cochin Port Trust. W.P(C).No.23152 of 2014 is filed seeking a direction to the respondents to promote the petitioner to the post of Chief Fire cum Assistant Safety Pollution Control Officer. So far as W.P(C).No.26712 of 2014 is concerned, petitioner has an additional prayer apart from seeking promotion, challenging handing over the charge of Chief Fire cum Assistant Safety/Pollution Control Officer to the 5th respondent. W.P(C). No.23450 of 2014 is filed by one Sunil Kumar an employee who is working as Fireman in the Fire Department of the Cochin Port Trust. He filed the Writ Petition challenging disciplinary proceedings initiated against him.

2. This Court as per interim order dated 14.10.2014 ordered that disciplinary authority may proceed with the enquiry, but without finalization of the proceeding.

3. Petitioners case with regard to the disciplinary proceeding is that charge laid against them are untenable. There

is no material to proceed against the petitioners. Essentially, these Writ Petitions are filed alleging that charge levelled against the petitioners would not prove any misconduct against them. This Court, in exercise of the power under Art.226 of the Constitution of India, in the normal circumstances not expected to evaluate factual assertion in a charge levelled against the petitioners. Whether, charge is tenable or not can be proved or disproved based on evidence being adduced before the Enquiry Officer. It is admitted now the evidence has been completed and finalization of the proceedings alone is awaited. Since this Court has passed order not to finalize the proceedings, Enquiry Officer has not passed any order in the matter.

4. Considering the facts and circumstances, I am of the view that disciplinary proceeding initiated against the petitioners shall be completed within a period of three months. In relation to the promotion of the Writ Petitioner M.P Ramesh to the post of Chief Fire cum Assistant Safety/Pollution Control Officer, it is submitted by the learned Standing Counsel appearing for the 4th respondent that no decision has

been taken by the Departmental Promotion Committee and they will take appropriate decision after deliberation in due course. It is admitted that the post of Chief Fire cum Assistant Safety/Pollution Control Officer is vacant and another person is put in charge. 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.26712 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.

Writ Petitions are disposed of.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.

Sbna/30/01/15