

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WP(C).NO. 30577 OF 2014 (V)

PETITIONER(S):

**CHANDRAVATHI P.K, EXECUTIVE ENGINEER,
KERALA WATER AUTHORITY,
QUALITY CONTROL DIVISION, KOCHI,
NETTOOR P.O., KOCHI -682 040.**

**BY SRI.C.P.SUDHAKARA PRASAD, SENIOR ADVOCATE.
ADVS. SRI.S.RAMESH,
SRI.NAVEEN.T,
SMT.POOJA SURENDRAN.**

RESPONDENT(S):

- 1. KERALA WATER AUTHORITY,
JALABHAVAN, VELLAYAMBALAM,
THIRUVANANTHAPURAM- 695 033,
REPRESENTED BY ITS MANAGING DIRECTOR.**
- 2. THE DEPARTMENTAL PROMOTION COMMITTEE
FOR PROMOTION TO THE CATEGORY OF
SUPERINTENDING ENGINEER,
KERALA WATER AUTHORITY, THIRUVANANTHAPURAM -695 033,
REPRESENTED BY ITS CONVENER MANAGING DIRECTOR,
KERALA WATER AUTHORITY.**
- 3. STATE OF KERALA,
REPRESENTED BY THE ADDITIONAL
CHIEF SECRETARY TO GOVERNMENT,
WATER RESOURCES (WATER SUPPLY-B) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695 001.**
- 4. S. HARIS,
SUPERINTENDING ENGINEER, (UNDER ORDER OF REVERSION),
KERALA WATER AUTHORITY, JENURAM PROJECT CIRCLE,
KOCHI- 682 011.**
- 5. K. MUHAMMED SABU,
KERALA WATER AUTHORITY,
SUPERINTENDING ENGINEER (UNDER ORDER OF REVISION),
OFFICE OF THE CHIEF ENGINEER (NORTH),
KOZHIKODE- 673 001.**

- 6. ALEX KURIAKOSE,
SUPERINTENDING ENGINEER, (UNDER ORDER OF REVERSION),
KERALA WATER AUTHORITY, P.H. CIRCLE,
MOOVATTUPUZHA -686 661.**
- 7. V.G. REKHA,
SUPERINTENDING ENGINEER (UNDER ORDER OF REVERSION),
KERALA WATER AUTHORITY, VASCON,
THIRUVANANTHAPURAM- 695 001.**
- 8. A. VIJAYAM,
EXECUTIVE ENGINEER, KERALA WATER AUTHORITY,
QUALITY CONTROL DIVISION, THIRUVANANTHAPURAM- 695 001.**
- 9. JULIAT JOSEPH,
EXECUTIVE ENGINEER, KERALA WATER AUTHORITY,
JENURAM DIVISION, KOCHI- 682 011.**
- 10. P.N. SWAMINATHAN,
EXECUTIVE ENGINEER, KERALA WATER AUTHORITY,
PROJECT DIVISION, ADOOR -689 645.**

**R1 & R2 BY ADV. SRI.GEORGE MATHEW, SC.
R3 BY SR. GOVT. PLEADER SRI.M.A. FAYAZ.
R4 & R6 BY ADVS. SRI.S.RADHAKRISHNAN,
SRI.S.RAJ MOHAN.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29-01-2015, ALONG WITH WP(C).NO.32100 OF 2014, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 TRUE COPY OF THE SENIORITY LIST OF EXECUTIVE ENGINEERS IN THE WATER AUTHORITY IN THE DEGREE QUOTA AS ON 01-02-2014 WAS ISSUED BY THE 1ST RESPONDENT BY ORDER DATED 10-03-2014.
- EXHIBIT P1(A) TRUE COPY OF THE SENIORITY LIST OF THE EXECUTIVE ENGINEERS IN THE DEGREE QUOTA AS ON 01-02-2014 ATTACHED TO THAT.
- EXHIBIT P2 TRUE COPY OF THE SELECT LIST PREPARED BY THE 2ND RESPONDENT AFTER GIVING CONCURRENCE WAS COMMUNICATED BY THE GOVERNMENT TO THE MANAGING DIRECTOR KERALA WATER AUTHORITY BY COMMUNICATION DATED 09-10-2014.
- EXHIBIT P3 TRUE COPY OF THE PROMOTION ORDER DATED 23-10-2014 TO THE RESPONDENT 4 TO 7 WERE GIVEN AS SUPERINTENDING ENGINEER.
- EXHIBIT P4 THE CONFIDENTIAL REPORTS FOR THE PERIOD 30-10-2009 TO THE 31-12-2009.
- EXHIBIT P4(A) COPY OF THE CONFIDENTIAL REPORTS FOR THE PERIOD 01-01-2010 TO THE 31-12-2010.
- EXHIBIT P4(B) COPY OF THE CONFIDENTIAL REPORTS FOR THE PERIOD 01-01-2011 TO THE 28-02-2011.
- EXHIBIT P4(C) COPY OF THE CONFIDENTIAL REPORTS FOR THE PERIOD 01-03-2011 TO THE 13-07-2011.
- EXHIBIT P4(D) COPY OF THE CONFIDENTIAL REPORTS FOR THE PERIOD 14-07-2011 TO THE 31-12-2011.
- EXHIBIT P4(E) COPY OF THE CONFIDENTIAL REPORTS FOR THE PERIOD 01-01-2012 TO THE 09-07-2012.
- EXHIBIT P4(F) COPY OF THE CONFIDENTIAL REPORTS FOR THE PERIOD 10-07-2012 TO THE 15-08-2012.
- EXHIBIT P4(G) COPY OF THE CONFIDENTIAL REPORTS FOR THE PERIOD 16-08-2012 TO THE 06-10-2012.
- EXHIBIT P4(H) COPY OF THE CONFIDENTIAL REPORTS FOR THE PERIOD 07-10-2012 TO THE 31-10-2014.

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- EXHIBIT P4(I) COPY OF THE CONFIDENTIAL REPORTS FOR THE PERIOD 01-11-2012 TO THE 31-12-2012.**
- EXHIBIT P4(J) COPY OF THE CONFIDENTIAL REPORTS FOR THE PERIOD 01-01-2013 TO THE 04-11-2013.**
- EXHIBIT P4(K) COPY OF THE CONFIDENTIAL REPORTS FOR THE PERIOD 05-11-2013 TO THE 31-12-2013.**
- EXHIBIT P5 TRUE COPY OF THE ORDER DATED 13-03-1995 THE CHIEF ENGINEER (SR) POSTED THE PETITIONER AS ASSISTANT ENGINEER IN PH SUB DIVISION, NORTH PARAVOOR.**
- EXHIBIT P6 TRUE COPY OF THE VIGILANCE ENQUIRY REPORT SUBMITTED BY THE DY. SP.**
- EXHIBIT P7 A TRUE COPY OF THE INFORMATION ISSUED BY THE SUPERINTENDENT OF POLICE TO THE VIGILANCE DIRECTOR.**
- EXHIBIT P8 TRUE COPY OF THE MEMO OF CHARGES DATED 29-08-2006 ISSUED BY THE CHIEF ENGINEER (HRD & GENERAL) TO THE PETITIONER.**
- EXHIBIT P9 TRUE COPY OF THE REPLY DATED 19-10-2006 WITH RELEVANT DOCUMENTS INCLUDING EXT P6 AND P7 FILED BY THE PETITIONER. (WITHOUT EXHIBITS).**
- EXHIBIT P10 A TRUE COPY OF THE COMMUNICATION DATED 12-02-2013 SENT BY THE MANAGING DIRECTOR OF KERALA WATER AUTHORITY TO THE ADDITIONAL CHIEF SECRETARY WATER RESOURCES DEPARTMENT.**

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.
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W.P(C).Nos.30577 and 32100 of 2014
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Dated this the 29th day of January, 2015

JUDGMENT

These Writ Petitions are directed against non inclusion of petitioners for the promotion as Superintending Engineer in Kerala Water Authority on account of pendency of vigilance case. By virtue of the seniority, petitioners are entitled to be considered for promotion as Superintending Engineer. The only issue now pertains to the pendency of vigilance case. Considering the factual issues relating to this case, short facts are necessary for consideration, which as follows:

A surprise check was conducted in the year, 2000 by the Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau Central Range Cochin-18. Certain irregularities were detected in relation to urban water supply scheme. After enquiry, Deputy Superintendent of Police found that there is nothing incriminating to lay charge against the petitioners. Deputy Superintendent of Police recommended that the matter may be placed before the Superintendent of Police for further action. The Superintendent of Police in his report dated 23.12.2003 accepting the recommendation of the Deputy

Superintending of Police in relation to certain issues relegated the matter to the Kerala Water Authority to take a decision. In the meanwhile, departmental proceedings were initiated against the petitioner. A memo of charges were served on 29.08.2006. Petitioners rebutted memo of charges by defence. It seems no follow up action been taken by the water authority to conclude any proceeding thereafter. The Managing Director of Kerala Water Authority sent communication to the Additional Chief Secretary to Government, Water Resources Department to ascertain the present position of Vigilance Tribunal enquiry. It appears that water authority as per office letter dated 12.02.2013 had recommended the Government for constitution of Vigilance Tribunal in relation to the irregularities in the work. It has been pointed out in the above letter that even though vigilance enquiry report was forwarded in the year 2005, issue is not finalized even after lapse of more than 13 years. The work in relation to the issue was completed on 31.08.1996 but enquiry was conducted in the year 2000. It is pointed out that some of the accused have already retired from the service. It seems that as submitted by the learned Government Pleader that Government is awaiting

remarks from the department for initial enquiry by the vigilance department. The fact remains that even after the lapse of initial enquiry conducted by the Vigilance Superintendent of Police, no action has been taken to enquire into the matter through vigilance Tribunal. The question is whether petitioner can be denied their promotion only on account of impending enquiry by Vigilance Tribunal.

2. Learned Senior Counsel appearing for the petitioner in W.P(C).No.30577 of 2014 based on judgment of this Single Judge in W.P(C).No.3536 of 2009 submits that undue delay in initiating the enquiry by Vigilance Tribunal resulted denial of legitimate aspiration of the employee in the service. In the case referred as above, learned Single Judge held that there was more than a delay of 5 years after serving a memo of charges. This Court held that non-conclusion of the proceedings even after lapse of many years cannot affect the right of employees to claim for promotion.

3. I am of the view, undue delay in this case in initiating the enquiry by Vigilance Tribunal cannot be put an embargo on the legitimate right of the employee to claim for promotion. It is admitted that juniors have been promoted. If

that be so, there shall be a direction to convene an adhoc Departmental Promotion Committee within a period of two months and notwithstanding any impending enquiry, petitioners shall be considered for promotion to the post of Superintending Engineer in accordance with law. Accordingly, it is declared that petitioners shall be considered for promotion to the post of Superintending Engineer irrespective of pendency of any enquiry and they shall be given appropriate seniority in the promotion cadre of Superintending Engineer in preference to the juniors who have been promoted overlooking seniority of the petitioners.

The Writ Petitions are disposed of.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.