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SLP(C)No. 10126 OF 2001

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4086 OF 2004
{Arising out of S.L.P.(C) No.10126/2001}

MADHYA PRADESH ELECTRICITY BOARD

.....
APPELLANT(S)

:VERSUS:

DEV NARAYAN PATEL

.....
RESPONDENT(S)

O R D E R

Leave granted.

This appeal is preferred against the order passed by the High Court of Madhya Pradesh in a review petition filed by the appellant - Electricity Board, seeking review of the Judgment dated 25.08.1999 in LPA No.391/1998. The events leading to the filing of the review petition are set out hereinafter.

The respondent was selected and appointed as a Graduate Trainee by the appellant - Madhya Pradesh Electricity Board (hereinafter referred to as 'the Electricity Board') on 26.11.1976. After completion of the training on 12.1.1978, he was sent for medical examination. The Medical Board gave its opinion on 8.8.1978 that the respondent was having visual impairment known as 'High Myopia Fundis'. On the basis of the medical report, the Electricity Board took a decision to dispense with the services of the respondent by an order dated 29.8.1978. The respondent then filed a writ petition in the High Court which was dismissed. The LPA filed by the respondent was also dismissed. Thereafter the respondent preferred special leave petition {SLP(C) No .6068/78} in this Court. Pending the SLP, it appears that an interim direction was given to depute the respondent for fresh medical examination by the Central Medical Board. Pursuant to the directions of this Court, the Medical Board submitted its report to the effect that the respondent did not suffer from any ailment which made him physically unfit to perform his duties. The special leave petition was disposed of on 10.9.1990, recording the statement of the Attorney General appearing on behalf of the Electricity Board that on completion of one year's training, as per the rules of the Electricity Board, the question of respondent's regularisation "will be seriously and sympathetically considered." Accordingly, the appellant-Board issued an order dated 5.1.1991, appointing the respondent until further orders, as Assistant Engineer (Trainee) in the Generation Wing, on a fixed stipend and the respondent, along with other candidates, was required to undergo training at the Training Institute in Korba. After the completion of the said training, the respondent was appointed as Assistant Engineer w.e.f. 15.2.1992. He was thereafter confirmed on the post of Assistant Engineer. The respondent then represented on 10.2.1995 that he should not have been treated as a fresh appointee and deputed for training as he had already undergone the training in the year 1976-77 itself. The said representation did not evoke any response from the Electricity Board.

The second round of litigation is generated by the refusal of the Electricity Board to consider the above representation of the respondent, leading to the filing of a fresh writ petition praying for a direction to regularise his services as Assistant Engineer w.e.f. 20.12.1976 and to grant him all consequential benefits. This writ petition was allowed by the learned Single Judge of the High Court on 22.9.1998. The High Court found no justification in requiring the

petitioner (respondent herein) to undergo fresh training when he had already completed the training in the year 1978. The learned Single Judge of the High Court held that the Electricity Board cannot take advantage of its own wrong in terminating the services of the respondent on the ground of medical unfitness. The learned Single Judge, therefore, held that the writ petitioner was entitled to be appointed in the year 1978 and he is also "entitled to all the benefits for the period for which he was constrained to remain out" because of the wrong reports submitted by the Medical Board. The Electricity Board carried the matter in appeal. The Division Bench of the High Court disposed of the LPA by its order dated 25.8.1999. While substantially upholding the order of the learned Single Judge, the appeal was partly allowed and the arrears of salary from 1978 to 1992 was reduced to 50%. The arrears of salary were directed to be paid within three months failing which 15% interest was to be paid. With that modification, the LPA was dismissed. It appears that aggrieved by the order of the Division Bench of the High Court in LPA reducing the quantum of arrears of salary, the respondent preferred the SLP which was dismissed in limine on 9.5.2000.

Electricity Board filed a review petition in the year 2000 (for review of the order dated 25.8.1999 in LPA) so as to seek an order from the court that the respondent shall not be entitled to the benefit of promotion as a Superintending Engineer as he did not put in the requisite service. It may be stated here that in the meanwhile the respondent was promoted to the post of Executive Engineer on 4.8.2000 w.e.f. 2.10.1997. The Division Bench of the High Court dismissed the review petition while expressing its views on the question whether the respondent satisfied the criteria for promotion to higher post. It is against this order passed in the review petition the present SLP is filed.

In our view, the review petition raising the issues as to the correct date of promotion as Executive Engineer and the eligibility for promotion as Superintending Engineer is wholly misconceived. They were never put in issue by the respondent in any of the earlier proceedings nor any finding was recorded by the High Court in that behalf. The real issue before the High Court was whether the services of the respondent as Assistant Engineer were to be regularised w.e.f. 19.1.1978 when he completed his training in the first instance and whether the date of regularisation could be postponed to 17.6.1992. That issue was decided in favour of the respondent. As already noted, the learned Single Judge held that the respondent's appointment treating him as a fresh candidate was illegal and he was to be appointed from the date of completion of the first training and he was entitled to all the benefits for the period for which he was constrained to remain out of service. On appeal the Division Bench of the High Court modified the order of the Single Judge to the extent of quantum of arrears of salary for the intervening period. However, the Division Bench proceeded on an erroneous premise that all consequential benefits were directed by the learned Single Judge. The learned Single Judge's order, which is extracted above, is not categorical in this regard. The order of the learned Single Judge is clear to this extent viz. that monetary benefits for the period the respondent was kept out of service on account of wrongful decision of the Board, should be accorded. That direction as we have already noted, was partly modified. At any rate, the order of the learned Single Judge as modified by the Division Bench cannot be construed as a direction to grant promotion to the higher post. That issue has not been and could not have been decided in the writ petition or in the LPA filed by the Electricity Board. In this background, the High Court should not have gone into the aspect relating to promotion pursuant to the review petition filed by the Electricity Board, presumably labouring under a misapprehension that the High Court in effect commanded the Board to give promotion. While deciding the review petition the High Court addressed itself to an extraneous issue - an issue which was not raised nor decided in the main case. For this, no doubt, the appellant has to be partly blamed. In these circumstances we are of the view that the order under appeal has to be set aside. Any claim as to further promotional benefits has to be separately agitated by the respondent in appropriate forum, if it is open to him to do so under the law.

Still, the matter cannot be left out at this point and the uncertainty haunting the respondent in regard to the settlement of pension and arrears of pay, if any, should not be allowed to persist. It appears that the appellant-Electricity Board transferred the respondent to Chhattisgarh Electricity Board by its order dated 1.1.2002 and purported to relieve him. However, the Chhattisgarh Electricity Board was not prepared to entertain him to duty on the ostensible ground that the transfer was unilateral and the Chhattisgarh Electricity Board did not require the respondent's services. During the pendency of the SLP, certain directions were being granted by this Court for payment of salary by the appellant-Board. It seems the respondent has retired on attaining the age of superannuation on 31.5.2003. We are informed that the question regarding the allocation of the respondent to the concerned Electricity Board is pending determination with the Central Government. The learned counsel for the appellant submits that the appellant-Board will abide by the order of the Central Government and till then no liability should be fastened on the appellant in regard to the settlement of pension or arrears of salary from the date of his relief. We are not inclined to accept the contention of the appellant that the question of settlement of pension and according pensionary benefits to the respondent should be postponed till the Central Government decides the issue. We consider it eminently just and proper to direct the appellant-Board to settle the pension and grant pensionary be

benefits due to the respondent on the basis of the last drawn salary as Executive Engineer. If any claim is made for payment of arrears of salary for the period subsequent to his transfer and relief, that should also be disposed of by the appellant-Board and necessary payment should be made to the respondent. This exercise should be done by the appellant-Board within a period of two months from the date of this order. It is needless to mention that in case the Central Government decides the issue in favour of the appellant-Board the liability shall be taken over by the Chhattisgarh Electricity Board and necessary reimbursement should be made to the appellant-Board.

With these directions and observations, the appeal is disposed of without costs.

In view of the final disposal of the appeal, it is unnecessary to pass any order on the interlocutory applications.

.....J
(P.VENKATARAMA REDDI)

.....J
(B.P. SINGH)
NEW DELHI;
JULY 14, 2004.

ITEM No.13

Court No. 9

SECTION IVA
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.10126/2001

(From the judgement and order dated 16/02/2001 in MCC 756/00
of The HIGH COURT OF M.P. AT JABALPUR)

MADHYA PRADESH ELECTRICITY BOARD

Petitioner (s)

VERSUS

DEV NARAYAN PATEL

Respondent (s)

(With Appln(s). for directions and correction of typographical error
occurred in Judgment and Order dated 17.09.2003 and exemption from
filing O.T. and for payment of different amount and with prayer
for interim relief)

(FOR FINAL DISPOSAL)

(ALONGWITH THE PAPER BOOKS OF SLP(C) NO.7634/2000)

Date : 14/07/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE P. VENKATARAMA REDDI
HON'BLE MR. JUSTICE B.P. SINGH

For Petitioner (s)Mr. Satish K. Agnihotri,Adv.
Mr. Anil K. Pandey,Adv.
Mr. Amit Mishra,Adv.

For Respondent (s)Mr. Shankar Divate,Adv.

Ms. Pratibha Jain,Adv.
Mr. A.P. Dhamija,Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is disposed of without costs, in terms of the signed order. In view of the final disposal of the appeal, it is unnecessary to pass any order on the interlocutory applications.

(A.S. BISHT) (PROMILA NAGPAL)

COURT MASTER

COURT MASTER

[Signed order is placed on the file]