

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1959 OF 2020
(ARISING OUT OF SLP (CIVIL) NO. 21785 OF 2019)

THE CHIEF DIRECTOR,
HIGHWAYS DEPARTMENT,
GOVERNMENT OF TAMIL NADU & ANR.

.....APPELLANT(S)

VERSUS

ER. C. MURUGESAN

.....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

- 1) The challenge in the present appeal is to an order passed by the Division Bench of the High Court of Judicature at Madras on 19th June, 2019 whereby an appeal against the order passed by the learned Single Bench on 9th January, 2019 was dismissed.
- 2) The respondent joined as Junior Engineer in the Highways Department of the State on 2nd February, 1977 and his service was re-designated as Assistant Engineer on 19th June, 1985. The respondent successfully completed his probation on 14th November, 1988.

- 3) A number of disciplinary proceedings were initiated against the respondent while he was working as Assistant Engineer, but on 11th October, 2002, all the charges were dropped. The proceedings initiated against the respondent vide charge sheet dated 26th August, 2002 with respect to issue of improper maintenance of accounts for rice and wheat led to the recovery of loss of Rs.30,594/- to the Government in nine installments vide order dated 16th April, 2003. The said order was challenged by the respondent before the Tamil Nadu Administrative Tribunal. Such order was set aside on 26th June, 2003.
- 4) The respondent sought promotion as Assistant Divisional Engineer which was granted on 11th April, 2003. The respondent joined as Assistant Divisional Engineer on 6th June, 2003.
- 5) Another charge sheet was served upon the respondent on 30th December, 2003 in connection with audit objection pending to the tune of Rs.25,735/- when the respondent was working as Junior Engineer. The respondent retired on 31st December, 2003 without prejudice to the Disciplinary Proceedings pending against him.
- 6) The respondent filed a writ petition challenging memo of the charges issued by the Inquiry Officer (IO) on 30th December, 2003 calling upon the respondent to appear before it. The said writ petition was allowed on 2nd November, 2010. An appeal preferred by the State against the order of the learned Single Bench was dismissed.
- 7) The name of the respondent was included in the seniority list of

Assistant Divisional Manager for the year 1991-92 at Sl. No. 16A vide order dated 11th January, 2013. It is thereafter the retirement benefits were paid to the respondent. The junior to the respondent i.e. S. Chandrabalan at Sl. No. 17 was promoted on 14th January, 2004 i.e. after attaining the age of superannuation of the respondent on 31st December, 2003.

- 8) The respondent filed the writ petition claiming promotion to the post of Divisional Engineer. The grievance of the respondent was that the order directing to include the name of the respondent at Sl. No. 16A has not been implemented. Consequently, the said writ petition was allowed by the learned Single Judge on 9th January, 2019 and directed the appellants to promote the respondent notionally as Divisional Engineer. The appeal against such order was dismissed. Aggrieved, the State is in appeal before us.
- 9) The argument of the learned counsel for the appellants is that the respondent is claiming promotion from the date his junior was promoted but said junior was promoted after superannuation of the respondent, therefore, he cannot be promoted to the post of Divisional Engineer.
- 10) On the other hand, the respondent who appeared in person argued that the appellants have intentionally delayed the preparation of panel for promotion so as to deny the benefit of promotion to the respondent. The panel was prepared only after the retirement of the respondent when the appellants could prepare the panel even before the superannuation of the respondent. He further argued

that the Government Order dated 11th January, 2013 has not been implemented.

- 11) After examining the record, we find that the order of the High Court is clearly unsustainable in law. The argument that the order dated 11th January, 2013 has not been implemented is not factually correct. The order was to place him in the cadre of Assistant Divisional Engineer at Sl. No. 16A. As a member of Assistant Divisional Engineer, the respondent is entitled to pay and allowances and retirement benefits corresponding to the pay payable to him as Assistant Divisional Engineer. It is not in dispute that all such retirement benefits have been paid to him. However, the argument that the appellants have delayed the preparation of panel for promotion to the post of Divisional Engineer is in the realm of conjectures. The fact is that the junior of the respondent was promoted on 14th January, 2004 i.e. after the superannuation of the respondent on 31st December, 2003. The respondent has right of consideration for promotion from the date his junior was promoted. Since the promotion of the junior is after the superannuation of the respondent, he cannot claim any right to seek promotion.
- 12) In view of the fact that the junior of the respondent was promoted after the superannuation of the respondent, the direction to promote the respondent as Divisional Engineer is clearly unsustainable and the same is set aside. The writ petition is dismissed and the order passed by the High Court is set aside.

Accordingly, the appeal is allowed.

.....J.
(L. NAGESWARA RAO)

.....J.
(HEMANT GUPTA)

**NEW DELHI;
MARCH 04, 2020.**