

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

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6185 OF 2001

MOBARAK HUSSAIN

Appellant (s)

VERSUS

STATE OF BIHAR & ORS.

Respondent(s)

(With office report )

Date: 22/02/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant(s)

Mr. M. Tarique Siddiqui, Adv.

Ms. Naresh Bakshi, Adv.

For Respondent(s)

Mr. Ashok Mathur, Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard learned counsel for the parties.

The appeal is allowed in terms of the signed  
order.

(R.K. DHAWAN)

(VEERA VERMA)

COURT MASTER

COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6185 OF 2001

MOBARAK HUSSAIN

.... Appellant.

VERSUS

STATE OF BIHAR & ORS.

.... Respondents.

O R D E R

The appellant challenges the judgment of the Division  
Bench of the High Court of Patna at Ranchi. The appellant herein was

appointed as a untrained intermediate teacher on 5-12-1960 and was drawing the scale of pay of untrained intermediate teacher. The appellant became graduate in 1967 and was granted graduate untrained teacher scale and was transferred as assistant teacher in a school at Hazaribagh district. Government of Bihar accepted the Kothari Education Commission Report dated 1-4-1968 and revised the pay scales of teachers. Consequent on implementation of the Kothari Education Commission Report the appellant was given benefit of enhanced pay scale of a graduate trained teacher in 1990 with retrospective effect from 22-12-1971. Later, the

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authorities felt that the appellant was not entitled to get this benefit as he was not posted as a Headmaster in a school and as he was not entitled to get pay scale of graduate trained teacher and the amount already disbursed

to the appellant was sought to be recovered from him. Aggrieved by

these proceedings, appellant preferred writ petition before the High Court. The learned Single Judge was pleased to dismiss the writ petition and against that the appellant filed L.P.A. and the Division Bench of the High Court dismissed his appeal. Hence, this appeal by special leave.

We heard learned counsel for the appellant and counsel for the respondent-State.

The appellant contended that when the Kothari Commission Report was accepted by the Government, it was decided that untrained teacher when get himself trained he would be entitled to scale of pay meant for trained teacher and his pay would be fixed in the new scale and clause 6 of the proceedings issued by the Education Department on 24-5-1966 makes this position clear. Therefore it was contended by the appellant counsel that the appellant was rightly given the higher scale of pay from 22-12-1971 and the steps taken by the Government to recover the alleged excess payment is illegal.

The counsel for the respondent-State submitted that the appellant was not entitled to get the pay scale of a trained graduate teacher as he was not posted as a headmaster in a school and only the persons appointed against a post of headmaster would be entitled to such scale of pay and the respondent-State relied on a circular issued by the Government on 6-2-1966. It was also contended that the appellant was not posted as a headmaster in any school and he continued as a assistant teacher in a school, therefore, he was not entitled to the scale of pay of a trained graduate teacher.

The contention advanced by the counsel for the State appears not to be correct. The Government accepted the Kothari Commission Report and in the proceedings issued on 24-5-66, it is specifically stated that the moment an untrained teacher gets himself trained, he will be entitled to the scale of pay meant for a trained teacher. The para 6 of the proceedings reads as follows:

"6. No increase in emoluments will be admissible to

untrained teachers beyond the 1st April, 1968 nor will they be entitled to draw more than the initial of the pay scale now prescribed for trained teachers of the next lower qualification. But, the moment an untrained teacher gets himself trained, he will be entitled to the scale of pay meant for a trained

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teacher of his qualification and his pay will be fixed in the new scale in the same manner as indicated in paragraph 3 above."

(Emphasis supplied)

There is no dispute that the appellant herein completed graduation in 1967 and that the recommendations of Kothari Commission Report were accepted by the Government and as the appellant had been a trained graduate when the proceedings were issued and in 1990 he was given the benefits of higher scale of pay and it was with effect from 1971 as he was qualified and entitled

to get the higher scale of pay from 22-12-1971 onwards. The higher scale of pay was rightly given to the appellant and there was no excess payment as alleged by the respondent-State. The payment already made to the appellant should not have been sought to be recovered by the respondent-State and the view taken by the learned Single Judge as well as by the Division Bench is not correct. We set aside the order passed by the learned Single Judge as well as the order passed by the Division Bench and we hold that the appellant is not liable to refund any amount to the respondent-State. The appeal is allowed. We hold that the appellant was entitled to get the trained graduate

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teacher scale of pay from 22-12-1971 and he is also entitled to get other consequential benefits and the respondent-State is directed to give such other consequential benefits as are due to the appellant.

.....J

(K.G. BALAKRISHNAN)

.....J

(B.N. SRIKRISHNA)

NEW DELHI ;

FEBRUARY 22, 2005.