

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). 2584 OF 2001

UNIVERSITY OF BIHAR & ORS.

Appellant (s)

VERSUS

KAMAL DEO THAKUR & ORS.

Respondent(s)

Date: 02/03/2005 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. Akhilesh Kumar Pandey, Adv.

Mr. Sudhanshu Saran, Adv.

Mr. Rajesh Prasad Singh, Adv.

For Respondent(s)

Respondent-In-Person

UPON hearing counsel the Court made the following

O R D E R

Heard learned counsel for the appellant and thereafter
respondent who appeared in person.

The appeal is disposed of 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.2584 OF 2001

UNIVERSITY OF BIHAR & ORS.

.... Appellants.

VERSUS

KAMAL DEO THAKUR & ORS.

.... Respondents.

O R D E R

The respondent herein was a Lecturer in M.J.K. College,

Bettiah, a constituent college of the Bihar University, Muzaffarpur. By an

Order dated 16.12.1982 the respondent was transferred to P.N College at

Parsa. Respondent did not join at P.N College at Parsa and he challenged

the transfer order in a writ petition filed before the High Court.
The

respondent could not get any stay or interim order and the writ petition

was dismissed by the High Court. He filed an L.P.A. before the Division

Bench that was dismissed, thereafter he moved this Court and the his SLP

was dismissed on 29-4-1985. In the meantime the College Authorities

published a notice directing him to join duty failing which he would be

removed from service. Despite this notice being published in two

newspapers having circulation in the locality; the respondent declined to

join duty in the transferred place. The Authorities terminated his

services on 13-9-1985. The respondent filed

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civil suit which was dismissed and in 1988 he filed a writ petition

challenging the validity of the termination order. The learned Single

Judge found that in the termination order mala fide conduct was

attributed to the respondent and in the absence of an inquiry the termination order was vitiated by failure to comply with the principles of natural justice and the learned Single Judge directed that the respondent be paid 25% of the arrears of salary for the period he was out of service and the entire period be treated as if he was in service and be counted for all other purposes.

Aggrieved by this judgment the appellant University preferred an appeal before the Division Bench and the same was dismissed. Hence, this appeal by special leave.

We heard learned counsel for the appellant and the respondent who appeared in person.

The counsel for the appellant strenuously contended before us that the notice was published in the newspapers and the respondent was aware of this notice and he did not join duty and the University was justified in not conducting an inquiry as the same would be futile exercise. The respondent who appeared in person submitted that he could not join at the transferred place as the Principal has not given him relieving order.

We are not inclined to accept the contention of the counsel

for the appellant University. The appellant

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should have conducted an inquiry as the respondent was very much available and especially when the University alleged that there were series of acts of mis-conduct on the part of the respondent. In the impugned order of termination several acts of misconduct are alleged and the respondent should have been given opportunity to defend his case. His removal was not solely based on the fact that he failed to join duty at a transferred place. At the same time, we are not inclined to

accept the defence of the respondent that he was unable to join at the transferred place as the Principal had not given him relieving order. The

counsel for the appellant points out that in transfer order itself it is

stated that he was being relieved forthwith. The proceedings of the order

dated 22.12.1982 was produced and wherein it is shown that the

respondent was transferred at P.N. College, Parsa and he was relieved

from the M.J.K. College, Bettiah from 23-12-1982. The respondent has also no case that he had approached the P.N. College at Parsa with a request to join duty there. There was laches on the part of the appellant University that a proper inquiry was not conducted and after the publication of the notice the respondent was terminated from service in 1985.

There is nothing in evidence to show whether he was not employed

elsewhere during the period when he was out of service. It is also to be

noticed that he being a Graduate in Law got himself enrolled as a
n
advocate on 17.10.1995. If

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he had continued in service he would have retired from service on 31st
January, 2000.

Taking all these facts into consideration, we are of the view that the respondent is not entitled to get arrears of salary to the extent of 25% for the entire period he was out of service. However, as a compensation for the illegal termination he be paid a sum of Rs.50,000/-

in lieu of arrear of salary as 25% granted by the learned Single Judge. We

also make it clear that respondent would be entitled to get all service

benefits as indicated in the Judgment of the learned Single Judge and

applicable to him. The amount of Rs.50,000/- and other service

benefits if any, be calculated and be paid within a period of four months.

The appeal is disposed of accordingly.

.....J

(K.G. BALAKRISHNAN)

.....J

(B.N. SRIKRISHNA)

NEW DELHI;

MARCH 2, 2005.