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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.697-698 OF 2006

INDIAN INST., SCIENCE SC/ST EMPS.
WEL.ASSN. ... APPELLANT(S)

VERSUS

INDIAN INSTITUTE OF SCIENCE & ANR. ... RESPONDENT(S)

O R D E R

Heard Mr. Mariarputham, learned senior counsel appearing for the appellant, Mr. R. Venkataramani, learned senior counsel appearing for the respondent No.2 and Mr. Gurudatta Ankdekar, learned counsel appearing for the respondent no.1. These appeals are directed against an order dated June 7, 2004 passed by a Division Bench of the Karnataka High Court in Writ Appeal Nos.4570-4571 of 1998. By the impugned order, the Division Bench dismissed the intra-court appeal preferred by the appellant and affirmed the decision of the learned Single Judge holding that the provision in the Career Advancement Scheme introduced by the Indian Institute of Science (respondent No.1) that allowed for the employees belonging to Scheduled Castes and Scheduled Tribes a shorter period as eligibility criterion for being considered for grant of the higher scale of pay was constitutionally invalid and unsustainable.

On hearing counsel for the parties, we are fully in agreement with the view taken by the Karnataka High Court and we find no merit in the appeals insofar as the main issue is concerned.

There, however, remains the limited question of recovery of the excess amount paid to the concerned employees, the members of the petitioner Association. The excess amount was paid to the concerned employees as a result of their being granted the higher scale of pay on the basis of the shorter

qualifying period that has been struck down by the High Court. It is, however, to be noted that the excess payment made to the concerned employees was not due to any reason attributable to them directly or indirectly. That was on the

basis of a provision made in the Career Advancement Scheme framed by respondent No.1. The constitutional validity of the provision was challenged by respondent No.2 whose members are employees other than those belonging to Scheduled Castes

and Scheduled Tribes. ² The challenge to the provision in question was keenly contested both by respondent No.1 and the petitioner Association. Though the provision in question was found to be untenable, it cannot be said that the concerned employees were in any way responsible for payment of the

excess amount as part of their salary. In those

circumstances, it will not be just, fair and reasonable to

allow respondent No.1 to make any recoveries from the

concerned employees. It will be, of course, open to

respondent No.1 to re-fix the salary admissible to the

concerned employees and, if need be, to put them in the lower grade in the same scale of pay or even in the lower scale of pay. But no recovery of any earlier payments made to them would be permissible.

The appeals are, accordingly, dismissed subject to the above directions in regard to any recoveries from the concerned employees.

.....J.
(Aftab Alam)

.....J.
(R.M. Lodha)

New Delhi,
December 08, 2010

