

# SUPREME COURT OF INDIA

Hon'ble Justice V. R. Krishna Iyer; Justice R. S. Pathak and Justice O. Chinnappa Reddy

K. S. Vasudeva and Others v. Union of India and Others

Citation: 1980 Supp SCC 341 : AIR 1981 SC 1980

## JUDGMENT

V. R. Krishna Iyer, J.

1. A writ petition, challenging the order of the Central Government a few years after the order was made was allowed by the High Court. Aggrieved by the judgment of the High Court the opposite party has come up to this Court in appeal by special leave. A brief narration of the conspectus of facts may be necessary to highlight the issue that arises and appreciate the direction we propose to give.

2. In 1949 the Govt. of India constituted the Central Gaushala Development Board with the object of co ordinating the activities of gaushalas. A few years later (in 1952), the Board was replaced by the Central Council of *Gosamvardhana* (in short, C. C. G). This was an 'autonomous' body but completely under the administrative control of the Central Government. The staff recruited by the Council was not on the basis of qualifications prescribed for servants in Government departments. Nevertheless, they continued in service for several years until in 1969, the Central Government decided to dissolve the C. C. G. With effect from the 1st of December, 1969 the Central Council was dissolved and its work entrusted to State and Central Government agencies. Although the Central Government took over a considerable part of the work of the C. C. G., the staff employed by the Central Council could not be left in the lurch. They had no employer and so the Central Government considered what should be done to provide for the personnel formerly employed by the C. C. G. Many of them were absorbed by the Central Government. But the terms and conditions of service so far as these absorbed employees were concerned were considered at a meeting held in the office of the Deputy Secretary, Animal Husbandry

in the concerned Ministry of the Government of India. It was decided that the members of the staff of the Central Council should be given credit for service rendered in the Central Council since many of the schemes were transferred to the Department of Animal Husbandry. The appointments to the Central Govt. of these former employees of the C. C. G. were, therefore, fresh appointments. Nor was it a case of the Central Govt. having taken over, by any legal process, the Central Council of *Gosamvardhana*. Thus, the employees of the C. C. G. were new entrants into Government service. However, they were given credit for former service in the C. C. G., having regard to the similarity of functions and because the experience gained under the C. C., G. was valuable. When these new appointments were made, the regular employees in the Department of Agriculture of the Central Government found that their seniority was disturbed and the fresh appointees from outside claimed to be senior to them and promotion posts which they naturally expected to get were lost or about to be lost. The order giving credit for service under the C. C. G. dated 17th April, 1970 was challenged before the High Court successfully. The grievance made was that seniority, with effect from the date of their appointment to their respective posts in the Schemes of the C. C. G., was illegal and arbitrary since they were not in Government service at all but under a totally different autonomous agency. The High Court was impressed with this circumstance and allowed the Writ Petition.

3. Before us, counsel for the appellants, Shri Bhargava, has urged that there was no irrationality or arbitrariness about the action taken by the Central Government in giving seniority "with effect from the date of their appointment to the respective posts in the schemes of the Council". The objectives of the C. C. G. were substantially similar to those of the Directorate of Extension of the Agriculture Ministry. Moreover, similar treatment had been accorded on former occasions when employees from the I. C. A. R. and other institutions were taken over by the Central Government. There is some plausibility in this submission. But Shri Girish Chandra contended before us that many of the employees in the C. C. G. were recruited on an ad hoc basis without reference to qualifications and without any regard to proper election criteria. Such persons could not even have been considered for recruitment by the Central Government. Moreover, even if there were special circumstances which justified giving weightage for their experience in the C. C. G., the Central Government should have exercised its power of relaxation by application

of its mind to the facts present. Nothing of the sort was done, with the result that some of the respondents before us, who have been acting as Superintendents for a long period of years, find themselves threatened by the new induction of the C. C. G. employees. There is force in this submission.

4. We are impressed with the fact that even the Central Government could not make up its mind and had been for some time supporting the contentions of the writ petitioner in the High Court and sometimes were opposing those contentions. It was not because there was anything mala fide but because the intrinsic situation was one of confession. The absorption of the former employees of the C. C. G. was done as an act of compassion without consideration for qualifications compared to the regular servants. The present situation leaves much to be desired and one thing we are, satisfied about the mindlessness of the appointments made by way of transfer or absorption from the C. C. G. Maybe, Government, as a policy, thought it fit to take over the former employees of the C. C. G. Nobody can quarrel with such a policy decision. Maybe, Government thought that credit should be given for service rendered in a similar agency like the C. C. G. or at least some weightage should be given governmental action, especially in matters of service and security, must be governed by rational criteria having full consideration for the rights of other parties affected. The result otherwise would be that many would be expecting, under the existing rules, to acquire certain positions in service which would be defeated on account of thoughtless credit for service or weightage for service rendered in totally different bodies. This might be violative of Arts. 14 and 16. Nor do we have sufficient materials to show that the power to relax which, undoubtedly, the Central Government possesses, was exercised giving specific reasons in that behalf. Assuming, for a moment, that there are reasons for relaxation, they should be specified to convince the Court and the parties affected that the mind of the Government was applied to the issue. It is quite conceivable that Government may not give full weightage for all the length of service in the C. C. G. and may, perhaps, give only partial credit. It is also conceivable that Government may confine relaxation of rules or refixation of seniority only to temporary appointees. While we do not wish to speculate, we do wish to emphasize that there is no rational process demonstrated on the record. We are, therefore, inclined to set aside the

order of the Government dated 17th April, 1970, and to this extent we affirm what the High Court has done.

5. But we must make it very plain that it is perfectly within the power of the Government to have a nationalisation of the entire situation and if it thinks fit even to give weightage or credit for service in the C.C.G. But an this must be done after due consideration and not by mere acts of compassion. We, therefore, direct the Central Government to reconsider the matter and refix the criteria for seniority as between those employees who have been taken over from the C. C. G. and those already in service in the Ministry of Agriculture and Animal Husbandry. While we leave the matter free for the Central Government to re-apply its mind, we underscore the fact that any decision taken de novo must be in compliance with Art.16 and must be based on reasonable criteria having a nexus with efficiency in administration. Whatever promotions have been made need not be disturbed: and it is necessary for the sake of contentment and certainty that fresh orders should be made by the Government within at least six months from today. With these directions we dispose of the appeal.