

State of Mysore and Another

Vs

R. S. Kasi

Civil Appeal No. 1828 of 1970

(V. D. Tulzapurkar, V. Khalid JJ)

06.02.1985

### JUDGMENT

1. There is no substance in this appeal challenging the High Court's judgment rendered on April 7, 1969 in Writ Petition No. 2350 of 1966 whereby the High Court struck down Government's order dated October 1, 1963 repatriating the respondent to his so-called parent department, namely, Department of Agriculture.
2. Admittedly by a Government's order dated February 13, 1963 Cardamom Development Scheme in the Department of Agriculture (where the respondent was working as a Research Assistant) along with 12 other Development Schemes and other research schemes stood transferred to the Department of Horticulture and para 2 of the said Government order stated that the staff working in several schemes should continue to work in the respective schemes but they should henceforth be under the control of the Director of Horticulture for all administrative and disciplinary purposes. As result of this order the respondent stood transferred to the Department of Horticulture. On October 1, 1963 the Government passed a repatriation order repatriating the respondent from the Department of Horticulture back to the Department of Agriculture and this order was challenged by the respondent on the ground that since the entire Cardamom Development Scheme along with the staff attached to it had become a part of Department of Horticulture there could be no repatriation to the Department of Agriculture. The High Court accepted this contention and set aside the repatriation order. We are in agreement with the High Court's view that there could not be any repatriation of the respondent to the Department Agriculture because when the entire Cardamom Development Scheme together with its staff stood transferred to the Department of Horticulture he became an employee of that Department and was no longer in Department of Agriculture. In fact there was no post to which he could be repatriated since the post he was holding on February 13, 1963 came along with him to the Department of Horticulture.
3. Apart from this in our view the order of repatriation could be successfully challenged on the ground of discrimination under Article 14 of the Constitution. The High Court did not go into that aspect of the matter because of its decision on the first point (mentioned above) urged before it. Admittedly two officers, namely, Siddappa who was junior to the respondent and the respondent were ordered to be repatriated to the Department of Agriculture from the Department of Horticulture in spite of the fact that both were given option and they and exercised their option to continue in in the Department of Horticulture and the ground for their repatriation was one and the same, namely, that both were trained in soil conservation and as such their services could be better utilised in the Department of Agriculture. But after this repatriation order was passed Siddappa was allowed to continue in the Department of Horticulture and was given successive promotions, through temporarily, in the Department and the respondent was forced to revert to the Agricultural

Department. It was not disputed before us that had the respondent continued in the Department of Horticulture in the same way as Siddappa was allowed to continue the respondent would have got the promotions and not Siddappa who was junior to him. It is clear that after both had exercised their option to remain in the Department of Horticulture the two officers were similarly circumstanced but have been treated unequally and on this ground also the repatriation order is open to challenge.

4. Before parting with the case we would like to point out that in spite of the fact that there was no stay operating against the High Court's order during the pendency of the appeal here the High Court's order has remained unimplemented. We do hope that after this appeal is dismissed the appellants will accord to the respondent the appropriate position to which he would be entitled in the Department of Horticulture and give him all monetary benefits as if the repatriation order had not been passed.

5. Appeal is, therefore, dismissed with costs.

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