

(2001) 09 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 29429 of 2001

C. Shivashankar

APPELLANT

Vs

Bangalore Mahanagara Palike and Others

RESPONDENT

Date of Decision : 26-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) ILR (Kar) 4907 : (2002) 1 KarLJ 562 : (2001) 4 KCCR 432 SN

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : P.S. Rajagopal, for the Appellant; Sreenivasa Murthy, Government Advocate, Putte Gowda and M.V. Hiremath, for the Respondent

Judgement

The Court

1. Petitioner, an officer working in the office of the first respondent-Bangalore Mahanagara Palike ("the Mahanagara Palike" for short), Bangalore, is before this Court in this petition filed under Articles 226 and 227 of the Constitution of India, primarily questioning the final gradation list of Assistant Executive Engineers (Electrical) as on 1-1-2001 prepared and published by the Mahanagara Palike, by its office order hearing No. 312(6). PR. 200/00-01, dated 15-6-2001. The incidental prayer in the writ petition is to set aside the promotion granted to the second respondent herein to the next promotional post of Executive Engineer (Electrical) by the first respondent-Mahanagara Palike, by its official memorandum in No. B12(6). PR. 052/2001-02, dated 25-7-2001.

2. Brief facts are:

Petitioner had joined the services of the first respondent-Mahanagara Palike as a Works Inspector on 19-12-1974. He was promoted to the post of Electrical Supervisor on 21-1-1976. The post of Electrical Supervisor was re-designated as Junior Engineer (Electrical).

3. The first respondent-Mahanagara Palike had prepared the seniority list of

Junior Engineers (Electrical) as on 1-1-1981. In the said gradation list, petitioner was assigned ranking at Sl. No. 4. It is stated in the petition that the name of the second respondent herein did not find a place in the said gradation list. This assertion of the petitioner in the writ petition is disputed by Sri Hiremath, learned Counsel appearing for the second respondent. This disputed fact would not make any difference for final disposal of the writ petition.

4. By an order made by the respondent-Mahanagara Palike on 20-9-1994, petitioner was promoted to the post of Assistant Executive Engineer (Electrical). He continues to work in the said post and cadre as on today.

5. Now let me notice the service profile of the second respondent herein.-

Second respondent had joined the services of the Bangalore Development Authority (BDA) (for short) as a Mechanic in work charge establishment on 24-3-1975 to carry out day-to-day work in the swimming pool which was managed by BDA.

6. By an order made on 5-7-1982, the BDA handed over the Jayanagar Swimming Pool along with the staff working therein as work charged establishment employees to the first respondent-Mahanagara Palike. Handing over of the swimming pool along with the staff working therein was accepted by the Administrator of Mahanagara Palike by his order dated 8-6-1983.

7. The State Government, by its order dated 11-12-1984, has ratified the action of the Administrator of Mahanagara Palike and also accorded sanction to create one post of Junior Engineer for accommodating the 8 work charged establishment employees taken over from BDA along with the Jayanagar Swimming Pool.

8. Thereafter, the State Government has framed rules known as the "Bangalore City Corporation (Absorption of Employees of Jayanagar Cauvery Swimming Pool taken over by Bangalore Mahanagara Palike) (Special) Rules, 1991" (hereinafter for the sake of brevity referred to as "Rules 1991"). The said rules were notified by the State Government by a notification dated 7-5-1991. The rules provide for absorption and service conditions of the employees working in work charged establishment in the services of the Mahanagara Palike. The interpretation of the provisions of the aforesaid rules and its implication is a larger issue, which is left open to be agitated by the parties to the lis in appropriate proceedings, if they so desire, and that exercise need not be done by me for disposal of this writ petition.

9. The second respondent herein, after his absorption into the services of the first respondent-Mahanagara Palike, had filed a writ petition before this Court in No. 26384 of 1992. In that, he had sought for a writ, to quash the orders made by the Deputy Commissioner (Administration) dated 5-12-1991, and the consequential relief that was requested was to promote him to the post of Assistant Executive Engineer (Electrical) in the establishment of the Mahanagara

Palike. That writ petition came to be disposed off by this Court on [11-11-1998]. In that, the Court was pleased to observe as under:

"By Annexure-C order certain benefits were extended to the petitioner. That order was issued on 3-12-1991. On 5-12-1991 the said order dated 3-12-1991 was kept in abeyance until further orders. The said order of stay is impugned before me.

I do not think this Court need examine the propriety or the correctness of the Annexure-D at this stage. All that has been done by Annexure-D order is that Annexure-C is kept in abeyance only. The proper course would be to direct the authorities to pass further consequential order in pursuance of Annexure-D within a period of 3 months from the date of receipt of the copy of this order. The writ petition stands disposed off as above".

10. By an order made by the first respondent-Mahanagara Palike dated 3-12-1991, the second respondent was granted time bound advancement. Subsequently, on 5-12-1991, the order made on 3-12-1991 granting time bound advancement to the second respondent was kept in abeyance.

11. Second respondent herein had filed I.A. No. II in W.P. No. 26384 of 1992 inter alia, seeking a direction to the Mahanagara Palike to promote him to the post of Assistant Executive Engineer (Electrical). That application came to be allowed by this Court on 24-9-1992. In that, the Court was pleased to direct the Mahanagara Palike to consider the case of the petitioner also for promotion to the post of Assistant Executive Engineer (Electrical) in accordance with law.

12. Aggrieved by the said interim direction issued by this Court, one Sri H.B. Mahadevaiah, who was also one of the contender to the promotional post, had filed a writ appeal before this Court in No. 1939 of 1992. The said appeal came to be disposed off by the Division Bench of this Court on 12-10-1992. In that, the Court was pleased to observe as under:

". . . . We are informed that there are cadre and Recruitment Rules framed which govern the promotion to the post of Assistant Executive Engineer (Electrical). If that is so, not only the petitioner in the writ petition and respondent 3 who is the appellant in this appeal but also all others who are eligible to be considered as per the Cadre and Recruitment Rules, and according to seniority-cum-merit, are required to be considered by the authority who is competent to consider the case for promotion. Accordingly, with this clarification and subject to the condition that the said promotion shall be subject to the result of the writ petition, this appeal is disposed off".

13. At this stage, I should notice the actual date of absorption of the second respondent in the first respondent-Mahanagara Palike. From the pleadings before the Court, it appears to be only on 14-10-1991. This is not disputed by the other side and in my view, this cannot be disputed in view of the several orders made by the first respondent-Mahanagara Palike.

14. The Departmental Promotion Committee of the first respondent-Mahanagara Palike met on 17-10-1994 to consider the cases of the petitioner and similarly placed persons for promotion to the next promotional post of Assistant Executive Engineers (Electrical). On the recommendations made by the Departmental Promotion Committee, petitioner and one Sri Vijaya Kumar were promoted to the post of Assistant Executive Engineer (Electrical) by the first respondent-Mahanagara Palike on 20-9-1994, The order of promotion so made by the first respondent-Mahanagara Palike has reached finality, in the sense that no employee officer of the Mahanagara Palike has questioned the same before any forum including before this Court.

15. At this stage, Sri Hiremath, learned Counsel appearing for the contesting second respondent states that aggrieved by the seniority list dated 1-10-1996 prepared and published by the first respondent-Mahanagara Palike, second respondent was before this Court in W.P. No. 14919 of 1997. In the said writ petition, the second respondent herein was seeking for three reliefs. They are:

"(i) To quash the seniority list dated 1-10-1996 prepared by the respondent-Mahanagara Palike;

(ii) To direct the Mahanagara Palike to consider his case for promotion to the post of Assistant Executive Engineer (Electrical) with effect from 15-9-1992 on the date when his junior, that is, third respondent (Sri Bojgowda) was promoted as Assistant Executive Engineer (Electrical);

(iii) To declare that the official memorandum issued by the respondent-Mahanagara Palike dated 1-2-1997 granting promotion to the eighth respondent, namely, Sri T. Ramakrishna as void and illegal".

16. By a reading of the prayers made in the aforesaid writ petition, one thing is clear that the second respondent herein, at no point of time, had questioned the promotion that was granted to the petitioner and to one Sri Vijaya Kumar as Assistant Executive Engineers (Electrical) by the respondent-Mahanagara Palike by its order dated 20-9-1994.

17. For the first time by an order made by the first respondent-Mahanagara Palike on 10-7-1997, the second respondent herein, was promoted to the post of Assistant Executive Engineer (Electrical).

18. Now, we come to the crucial question that is highlighted in this writ petition, namely.-

The first respondent-Mahanagara Palike had prepared the provisional gradation list of Assistant Executive Engineers (Electrical) as on 1-1-2001 and the same came to be notified on 9-5-2001. In the said provisional gradation list, petitioner was assigned ranking at Sl. No. 2 and his date of promotion was shown as 21-9-1994. In the said list, the second respondent herein was assigned ranking at Sl. No. 6 and his date of promotion was shown as 10-7-1997.

19. Petitioner was satisfied with the ranking assigned to him in the provisional gradation list. Therefore, there was no occasion for him to file his objections to the ranking assigned to him in the provisional gradation list.

20. However, second respondent herein filed his objections to the ranking assigned to him in the provisional gradation list dated 9-5-2001. In that he had contended that his date of entry into service should be taken as 24-3-1975 and he should be assigned ranking above that of the petitioner.

21. After considering the objections so filed by the second respondent herein, the first respondent-Mahanagara Palike has prepared the final gradation list of Assistant Executive Engineers (Electrical) as on 1-1-2001 and the same is published by an office order dated 15-6-2001. In that final gradation list, the second respondent herein is assigned ranking at Sl. No. 1 and petitioner has been "kicked down" to Sl. No. 3.

22. Petitioner asserts in the petition that even on the date of filing of the writ petition, the first respondent-Mahanagara Palike had not notified the final gradation list of Assistant Executive Engineers (Electrical). It is his further assertion that without notifying the said final gradation list, they have effected promotion of second respondent herein and one Sri K.G. Narayan, to the next promotional post of Executive Engineer (Electrical) on 25-7-2001.

23. It is the correctness or otherwise of the ranking assigned to the petitioner in the final gradation list of Assistant Executive Engineers (Electrical) as on 1-1-2001 prepared and published on 15-6-2001 and the promotion granted to the second respondent to the post of Executive Engineer (Electrical) by an order made on 25-7-2001 by the first respondent-Mahanagara Palike is the subject-matter of this writ petition.

24. Sri Rajagopal, learned Counsel appearing for the petitioner contends that the first respondent-Mahanagara Palike before altering, modifying, amending or reviewing the ranking assigned to the petitioner in the provisional gradation list, should have issued an appropriate notice to him and then only, should have prepared and published the final gradation list by altering the ranking assigned to the petitioner in the provisional gradation list. Since that has not been done in the present case, the action of the respondent-Mahanagara Palike is wholly arbitrary, unfair and unjust and contrary to the settled principles of law. In support of his contention, the learned Counsel relies upon the observations made by the Apex Court in the case of Union of India (UOI) and Another Vs. P.K. Roy and Others, and also the observations made by this Court in the case of C. Narayana v. Bangalore City Corporation and Ors.". The learned Counsel further contends that basing on such invalid and improper final seniority list, the first respondent-Mahanagara Palike could not have promoted the second respondent herein to the next promotional post of Executive Engineer (Electrical) ignoring the case and claim of the petitioner. Therefore, it is stated that the impugned order made by the first respondent-Mahanagara Palike dated 25-7-2001 in

promoting the contesting private respondent is not only arbitrary, wholly illegal, unfair and unjust.

25. Sri Putte Gowda, learned Counsel appearing for the first respondent-Mahanagara Palike sought to justify the procedure applied by the respondents while assigning ranking to the petitioner as well as to the second respondent herein in the final gradation list of Assistant Executive Engineers (Electrical) as on 1-1-2001 prepared and published on 15-6-2001. The learned Counsel further sought to justify the action of the first respondent-Mahanagara Palike in promoting the second respondent herein to the post of Executive Engineer (Electrical) based on the final seniority list so prepared and published.

26. Sri Hiremath, learned Counsel appearing for the contesting second respondent justifies the action of the first respondent-Mahanagara Palike in assigning the ranking at SI. No. 1 to the second respondent in the final gradation list of Assistant Executive Engineers (Electrical) published on 15-6-2001. The learned Counsel further states that since the second respondent is placed at SI. No. 1 in the final gradation list, the first respondent-Mahanagara Palike is justified in promoting him to the next promotional post. Lastly, the learned Counsel would contend, that if for any reason this Court, comes to the conclusion that the action of the first respondent-Mahanagara Palike in preparing the final gradation list of Assistant Executive Engineers (Electrical) is either invalid or illegal and further, the promotion granted to the second respondent to the next promotional post of Executive Engineer (Electrical) is also invalid and illegal, since he is already discharging his functions as an Executive Engineer (Electrical) in the office of the first respondent-Mahanagara Palike, he should not be disturbed at this stage.

27. Seniority in service law connotes the precedence or preference in position of an employee over other employees similarly situated. One of the important incidence of service career, namely, promotion is fully dependent on seniority or seniority plays a very important role while considering the cases of employees in the promotional process.

28. In service law, before publication of final seniority list by an employer, certain formalities requires to be observed. The first step in that regard is the preparation of provisional or draft gradation list and the same is required to be circulated to the employees concerned for the purpose of inviting objections from them. The next stop is to consider the objections raised by the affected persons. The last and the final step is to publish the final gradation list. If for any reason, ranking assigned in the provisional gradation list has to be altered or reviewed, the person/employee, who is going to be affected by such alteration or modification after considering the objections filed by the aggrieved person, a show-cause notice requires to be issued to the employee concerned, inter alia directing him to show cause why his ranking assigned in the provisional gradation list should not be altered or modified. This practice is inspired by the principles of natural justice. Secondly, a mistake in the draft gradation list can be

rectified, since any ranking assigned in the provisional or draft gradation list does not confer any right on the employee but before reviewing or altering the ranking assigned to an employee to his disadvantage, a show-cause notice is a must and that would be in compliance of principles of natural justice. The Apex Court in the case of S.K. Ghosh and Another Vs. Union of India (UOI) and Others, , was pleased to state, that seniority once fixed, creates a right in favour of a civil servant. Any alteration of the seniority would adversely affect the right of a civil servant. An alteration of seniority without notice k) the person so affected would be opposed to principles of natural justice.

29. I had an occasion to consider whether the employer can alter the ranking assigned to an employee in the provisional gradation list while preparing the final seniority list in C. Narayana's case, supra. In that decision, relying upon the observations made by the Apex Court in P.K. Roy's case, supra, I had taken the view that the employer cannot alter the ranking assigned to an employee officer in the provisional seniority list to his disadvantage while preparing the final seniority list without issuing an appropriate show-cause notice to the person who may be affected by such alteration in the final seniority list. In that decision, I had stated as under:

"7. Since the respondent-Corporation in the final seniority list prepared and published by them on 17-7-1996, have altered the ranking of the petitioners from what was assigned to them in the provisional seniority list, the same cannot be sustained by this Court, in view of the law declared by the Apex Court in the aforesaid decision. Therefore, the final seniority list of Junior Engineers prepared and published by the respondent-Corporation dated 17-7-1996 as on 1-12-1995 requires to be set aside by this Court".

30. It is now well-settled position of law that if an employer wants to modify, alter the ranking assigned to an employee, who is in his service, in the provisional gradation list, the employer is mandatory required to issue an appropriate notice to the person before altering his ranking in the final gradation list. Sri Putte Gowda, learned Counsel appearing for the first respondent-Mahanagara Palike has not brought to my notice any decision of the Apex Court which takes a contrary view. Therefore, keeping in view the law on the point, let me notice the fact situation.

31. The provisional gradation list of Assistant Executive Engineers (Electrical) as on 1-1-2001 was prepared and published by the respondent-Mahanagara Palike on 9-5-2001. In the provisional gradation list, petitioner was assigned ranking at SI. No. 2 and further, his date of promotion to the said post was shown as 21-9-1994. In the said list, the second respondent herein was assigned ranking at SI. No. 6 and his date of promotion to the said post was shown as 10-7-1997. Petitioner was satisfied with the ranking assigned to him in the provisional gradation list. Therefore, he did not file any objections before the first respondent-Mahanagara Palike either opposing or objecting to the ranking assigned to him in the provisional gradation list. However, the second respondent

herein, dissatisfied with the ranking assigned to him in the provisional gradation list, it appears, had filed his objections. The respondent-Mahanagara Palike, taking into consideration the objections so filed by the second respondent and without even issuing a show-cause notice to the petitioner, has now prepared the final gradation list of Assistant Executive Engineers (Electrical) as on 1-1-2001. In that, petitioner's ranking has been altered to his disadvantage and he is assigned a ranking at Sl. No. 3 whereas the second respondent is placed above him. In my opinion, the respondent-Mahanagara Palike, without issuing an appropriate show-cause notice to the petitioner and without affording him an opportunity of hearing could not have altered the ranking assigned to him in the provisional gradation list. Therefore, in my opinion, the action of the respondent-Mahanagara Palike is not only arbitrary but contrary to the well-accepted principles of law and also in violation of principles of natural justice. In that view of the matter, it is difficult to sustain the final gradation list of Assistant Executive Engineers (Electrical) as on 1-1-2001 prepared and published by the respondent-Mahanagara Palike in its office order dated 15-6-2001.

32. The first respondent-Mahanagara Palike, basing on the ranking so assigned to the petitioner and the second respondent herein in the final gradation list, has promoted the second respondent to the next promotional post of Executive Engineer (Electrical) since he was assigned ranking at Sl. No. 1 in the said list. Since I have taken exception to the final gradation list prepared by the respondent-Mahanagara Palike, the promotion that is granted to the second respondent based on such invalid and illegal gradation list also cannot be sustained by this Court.

33. Sri Hiremath, learned Counsel appearing for the promotee, submits that the second respondent has assumed charge as an Executive Engineer (Electrical) and therefore, it is stated that this Court should not disturb his promotion. In my opinion, this contention of the learned Counsel requires to be noticed only to be rejected, for the reason, that there is an error committed by the respondent-Mahanagara Palike while preparing the final gradation list of Assistant Executive Engineers (Electrical) and this has resulted in ignoring the case and claim of the petitioner to the next promotional post. The action of the first respondent is unfair and this has resulted in injustice to the petitioner. Secondly, when a seniority list is quashed, the appointments made on the basis of such seniority list requires to be set aside by this Court. Now that I have taken exception to the final seniority list prepared by the first respondent-Mahanagara Palike, any promotions made on the basis of such improper and invalid seniority list necessarily requires to be set aside and the promotee should necessarily get back to the original post that he was occupying prior to his promotion to the post of Executive Engineer (Electrical).

34. In view of the above, the following:

ORDER

I. Petition is allowed. Rule made absolute.

II. The final gradation list of Assistant Executive Engineers (Electrical) prepared and published by the first respondent-Mahanagara Palike dated 15-6-2001 is quashed.

III The Mahanagara Palike is directed to prepare a fresh final gradation list of Assistant Executive Engineers (Electrical) in accordance with law after due notice to the petitioner and to any other person who would be affected by alteration of his ranking in the provisional gradation list. This exercise the respondent-Mahanagara Palike shall do within six weeks from the date of receipt of a copy of this Court's order.

IV. The impugned order made by the respondent-Mahanagara Palike promoting the second respondent herein from the post of Assistant Executive Engineer (Electrical) to the post of Executive Engineer (Electrical) dated 25-7-2001 is set aside.

V. The Mahanagara Palike is directed to make in charge arrangements for the day-to-day administration of the Mahanagara Palike insofar as Executive Engineer (Electrical) is concerned.

VI. After preparing the fresh gradation list of the Assistant Executive Engineers (Electrical) working in the Mahanagara Palike, it is permitted to effect promotions from the post of Assistant Executive Engineers to the post of Executive Engineers (Electrical).

35. With these observations and directions, petition is disposed off. Ordered accordingly.