
(1981) 08 KAR CK 0047
In the Karnataka High Court
Case No : WP 824/75, etc

Chinnamannavar K.C. and Others

APPELLANT

Vs

Hubli-dharwar Municipal Corpn. and Another

RESPONDENT

Date of Decision : 21-08-1981

Acts Referred:

Citation : (1981) 2 KarLJ 524

Hon'ble Judges : M. Rama Jois, J

Judgement

1. In all these writ petitions though the prayers have been differently worded the grievance of all the petitioners is common in that, they are aggrieved by the denial of the pay scale of Rs. 160-350 with effect from 1-1-1970 in terms of the resolution passed by the Standing Committee of the Hubli-Dharwar Municipal Corporation and by the Corporation.

2. WP No. 824 of 1975 is presented by 17 persons. Out of them some of the petitioners have been given the pay scale of Rs. 160-350 with effect from 1st January 1970 during the pendency of the petition and a few others have presented individual writ petitions subsequently. Having regard to the nature of the relief sought for, the petitioners should have presented individual writ petitions.

Sri S. Suresh Joshi, learned Counsel appearing for the petitioners submitted that out of 17 petitioners, he would confine the petition to only petitioner 15, as out of the rest of the petitioners some of them have already got relief and some of them have filed individual writ petitions. Accordingly, WP No. 824 of 1975 is confined to petitioner-15. As all these writ petitions involve common questions of law and fact they are being disposed of by a common order.

4. Briefly, the relevant facts are as follows: All the petitioners were Junior Sanitary inspectors on the establishment of the Hubli-Dharwar Municipal Corporation which had been established under the Bombay Provincial Municipal Corporations Act, 1949. They were in the pay scale of Rs. 100-5-150-6-180 prior

to 1-1-1970. Their pay scale was revised to Rs. 120-240 with effect from 1-5-1970. After noticing the fact that uniform pay scale of Rs. 160-350 had been extended to Health Inspectors in the department of Health and Family Welfare Services of the State Government, the Standing Committee of Hubli-Dharwar Corporation passed a resolution dated 16 5 1973 (Ext-A) to the effect that the pay scale of Rs. 160-350 be extended to all the Junior Sanitary Inspectors with effect from 1-1-1970. Thereafter the Corporation also passed resolution or; 20-9-73 (Ext-B) to the same effect. Pursuant to the resolution of the Corporation the pay of the petitioners were also refixed in the new pay scale of Rs. 160-350 from 1-1-1970 as per order dated 11-10-1973 (Ext-C). The Commissioner, however, made an order on 27-12-1974 (Ext-E) under which the order by which the pay of the petitioners had been refixed in the pay scale of Rs. 160-350, was kept in abeyance. As the order refixing the pay of the petitioner was not given effect to in spite of the demand, the petitioners have presented these petitions.

5. Subsequently a resolution was made by the Administrator of the Corporation on 15-5-1976 (Ext-E in WP No. 5580 to 5586 of 1978) under which the pay scale of Rs. 160-350 was extended to Only 8 Sanitary Inspectors. The resolution of the Administrator specifically states that the earlier resolution of the Corporation has been modified in view of the Government letter dated 23-4-1976 under which the State Government directed that the pay scale of Rs. 160-350 be extended to 8 senior most Junior Sanitary Inspectors and therefore the earlier resolution of the Standing Committee and the Corporation on the subject stands annulled.

6. The Government letter dated 23-4-1976 produced at the time of hearing reads as follows:

"Sub-Upgradation of the posts of Junior Sanitary Inspectors to that of Senior Sanitary Inspectors in Hubli-Dharwar Municipal Corporation.

I am directed to invite reference to letter No. GAA/75-76 dated 26th February 1976 on the subject cited above, and to state that the instructions issued in Government letter No. HMA 161 MNU 73 dated 22-11-1974 to upgrades posts of Junior Sanitary Inspectors to that of Senior Sanitary Inspectors should be adhered. The rest of them shall be continued as Junior Sanitary Inspectors in the sanctioned scale (i.e. Rs. 100-220)."

The said letter indicates, that the Government accorded permission to upgrade only 8 posts of Junior Sanitary Inspectors to Rs. 160-350 and directed that the rest of the posts should be continued in the lower grade only. It is after the receipt of the above Government letter, the Administrator proceeded to modify the earlier resolutions of the Corporation and the Standing Committee and also proceeded to issue orders extending the benefit of the pay scale of Rs. 160-350 only to 8 Junior Inspectors. (Vide Annexure-G dated 17-5-1976 in WP No. 5580 to 5586/1978).

7. As a result of the direction issued by the Government, these petitioners to whom also the pay scale of Rs. 160-350 had been extended by virtue of the

resolution of the Standing Committee of the Corporation and the Corporation as stated earlier, have been deprived of the said pay scale.

8. The learned counsels for the petitioners contended that the resolution passed by the Standing Committee and the Corporation extending the pay scale of Rs. 160-350 to the petitioners were legal and valid and the Commissioner was bound to give effect to the said resolutions. It was also submitted that the direction issued by the Government restricting the upgradation to only 8 posts and directing that the rest of the posts should be continued in the earlier pay scale only was without authority of law and consequently the resolution of the Administrator modifying the earlier resolution of the Standing Committee and of the Corporation, so as to bring them in conformity with the directions of the State Government was also illegal and invalid. Per contra learned counsel for the respondents contended that the direction issued by the Government was lawful and consequently the decisions of the Administrator are legal and valid.

9. The answer to the rival contentions raised for the parties depends on the interpretation of the provisions of the Act. S. 51 of the Act empowered the Standing Committee not only to create the posts but also to sanction the pay and other conditions of services of persons to be employed in the services of the Corporation. The said section reads as follows:

"51 (1). Subject to the provisions of sub-section (4), the Standing Committee shall from time to time determine the number, designations, grades, salaries, fees and allowances of auditors, assistant auditors, officers clerks and servants to be immediately subordinate to the Municipal Chief Auditor and the Municipal Secretary respectively.

(2) The Commissioner shall, from time to time, prepare and bring before the Standing Committee a statement setting forth the number, designations and grades of other officers and servants who should in his opinion be maintained, and the amount and nature of the salaries fees and allowances which he proposes should be paid to each.

(3) The Standing Committee shall, subject to the provisions of sub-section (4), sanction such statement either as it stands or subject to such modifications as it deems expedient.

(4) No new permanent office with a minimum monthly salary, exclusive of allowances, of one hundred rupees or more shall be created without the sanction of the Corporation and no new office with a minimum monthly salary, exclusive of allowances, of five hundred rupees or more or with a maximum monthly salary, exclusive of allowance, of eight hundred rupees, or more shall be created without the sanction of the Provincial Government.

(5) Nothing in this section shall be construed as affecting the right of the Corporation or of the Commissioner to make any temporary appointment which it or he is empowered to make under S. 53.

(6) Explanation: As increase in the salary of any permanent office shall be deemed, for the purpose of sub-section (4), to be the creation of a new office if, by reason of such increase, the minimum monthly salary, exclusive of allowances, amounts to one hundred rupees or more or five hundred rupees or more, as the case may be, or the maximum monthly salary exclusive of allowances, amounts to eight hundred rupees or more."

Sub-section (1) conferred power on the Standing Committee to determine the number, designations, grades, salaries and conditions of services of officers and servants who were all subordinates to the Municipal Chief Auditor and Municipal Secretary respectively. The power of the Standing Committee to sanction the establishment conferred under sub-section (1) is however, subject to the provisions of sub-section (4). According to sub-section (4) no new permanent post with a monthly salary, exclusive of allowances, of Rs. 100 or more could be created by the Standing Committee without the sanction of the Corporation. Similarly no new office could be created by the Corporation if the minimum pay of the post exceeded Rs. 500, without the sanction of the Provincial Government. In the present case the pay scale of the post sanctioned was Rs. 160-350. Thus the minimum pay of the post exceeded Rs. 100 but was within Rs. 500. Therefore the resolution of the Standing Committee upgrading the posts to be effective, required the sanction of the Corporation. As stated earlier, the resolution of the Standing Committee approving upgradation of the post of Junior Sanitary Inspectors to Rs. 160-350 from 1st January 1970, had been ratified by a resolution of the Corporation also. Thus, with the passing of the resolution of the Corporation, the posts of Sanitary Inspectors in grade Rs. 160-350 stood created with effect from 1st January 1970. Consequently, all the persons who were holding the posts of Junior Sanitary Inspectors became entitled to the pay scale of Rs. 160-350 with effect from 1st January 1970. The order of the Commissioner refixing the pay of the petitioners in the pay scale of Rs. 160-350 in terms, of the resolution of the Standing Committee and the Corporation was in order. His subsequent order denying the petitioners the said pay scale was in contravention of those resolutions.

10. The learned Counsel for the respondents submitted, that though the Standing Committee and the Corporation had passed the resolutions to extend the pay scale of Rs. 160-350 to all the Junior Sanitary Inspectors with effect from 1-1-1970, it was competent for the State Government, in exercise of its power under S. 451 of the Act, to set aside or modify those resolutions and therefore it was submitted, that the direction issued by the Government in the first instance staying the resolution of the Corporation and subsequently in issuing a positive direction to restrict the upgradation to only 8 posts was in accordance with law. On this basis it was submitted that the subsequent resolution of the Administrator effecting modification of the earlier resolutions and orders, so as to bring them in conformity with the directions issued by the Government was lawful and consequently the petitioners are not entitled to the relief sought for in the petition.

11. S. 451 of the Act reads as follows:

"451. If the Provincial Government is of opinion that the execution of any resolution or order of the Corporation or of any other municipal authority or officer subordinate thereto or the doing of any act which is about to be done or is being done by or on behalf of the Corporation is in contravention of or in excess of the powers conferred by this Act or of any other law for the time being in force or is likely to lead to a breach of the peace or to cause injury or annoyance to the public or to any class or body of persons, the Provincial Government may, by order in writing, suspend the execution of such resolution or order, or prohibit the doing of any such act."

The above section empowered the State Government to suspend the resolution or order of the Corporation or of any municipal authority if the Government was of the opinion that the resolution was in contravention of or in excess of the powers conferred by the Act or of any other law for the time being in force or was likely to lead to a breach of peace or to cause injury or annoyance to the public or to any class body of persons. There fore, the question for consideration is whether the resolutions passed by the Standing Committee and the Corporation were contrary to the provisions of the Act or were in excess of the powers conferred on those bodies, because it is not the case of the respondents that the resolutions in question were likely to lead to the breach of peace or to cause injury or annoyance to the public or to any class or body of persons."

12. As pointed out earlier provisions of sub-section (1) read with sub-section (3) of S. 51 of the Act conferred power on the Standing Committee to create the posts in the services of the Corporation and to sanction the pay scales for the posts. The only restriction, placed on its powers under sub-section (4) was that a resolution of the Standing Committee required the approval of the Corporation if the minimum pay exceeded Rs. 100. In the present case the pay sanctioned did exceed Rs. 100. But the resolution of the Standing Committee had been approved by the Corporation. If only the minimum pay of the pay scale so sanctioned had exceeded Rs. 500, it would have become effective only after the sanction of the State Govt. As even the maximum basic pay of the post sought to be created was only Rs. 350, the resolution of the Standing Committee and the Corporation were perfectly within the powers conferred on them and consequently the State Government had no jurisdiction to interfere with those resolutions in the purported exercise of its powers under S. 451 of the Act. Therefore, the Government order dated 22-4-1976 directing the Corporation to restrict the upgradation of the posts only to 8 persons was without authority of law and consequently the action taken by the Administrator in obedience to such direction cannot also be sustained.

13. Sri Koujalgi, learned Counsel for the Corporation however, submitted that under sub-section (2) of S. 51, it was for the Commissioner to prepare and bring before the Standing Committee a statement setting forth the number, designations and grades of officers and servants, who were required to be

maintained in the services of the Corporation and unless such statement was placed before the Standing Committee it had no jurisdiction to pass the resolution. I find it difficult to accede to this submission. The wording of sub-section (4) of S. 51 is unambiguous. The powers of the Standing Committee conferred under that sub-section is made only subject to the provisions of sub-section (4). Therefore, the only restriction imposed on the Standing Committee was, its decision to create a post the minimum pay of which exceeded to R. 100 was to be effective if only if it seemed the sanction of the Corporation. Sub-section (2) only provides that the Commissioner could place before the Standing Committee, any proposal relating to the creation of post or fixation conditions of service, but the section nowhere provides that unless the proposal of the Commissioner is placed before the Standing Committee, it had no power to create a post or to fix the conditions of service applicable to any post. Hence, in my opinion, the mere fact that the Commissioner had not proposed to extend the pay scale of Rs. 160-350 to the post of Junior Sanitary Inspectors with effect from 1-1-1970 does not in any way affect the validity of the resolution.

14. As the resolutions of the Standing Committee and of the Corporation, were lawful, the petitioners acquired a right to get the pay scale of Rs. 160-350 with effect from 1-1-1970 and the Commissioner was under duty to give effect to the said resolution. The Government orders to the contrary and the decision of the administrator in obedience to it cannot be sustained.

15. Accordingly, I make the following order:

(i) Rule made absolute.

(ii) A writ in the nature of mandamus shall issue to the respondents to extend to the petitioners the pay scale of Rs. 160-350 with effect from 1-1-1970.

(iii) The petitioners shall be entitled to all the benefits flowing from such refixation their pay and also to the corresponding subsequent revision of pay and all other consequential benefits.

No costs.