

(2000) 11 KAR CK 0045

In the Karnataka High Court

Case No : Writ Petition No. 32753 of 1996 connected with Writ Petition No. 35139 of 1996

Dr. S. D. Nagaraj

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 21-11-2000

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 421

Citation : (2001) ILR (Kar) 430 : (2001) 4 KarLJ 268 : (2001) 4 KCCR 384 SN

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

Bench : Single Bench

Advocate : Sri B.B. Bajentri, for the Appellant; Sri S. Udayashankar, Government Advocate, Sri Ashok Harnahalli, Sri Nanjunda Reddy, Sri K. Subba Rao and Sri L. M. Pandurangaswamy, for the Respondent

Judgement

H.L. Dattu, J.—Seniority is an important condition of service and also an important right of an employee. On seniority, depends promotion, where promotion is made on the basis of seniority-cum-merit, Though an employee may not have a right to promotion, he has a right to be considered for promotion and such right has an intimate connection with his right of seniority.

2. Seniority is closely connected with the question of promotion. The important question is, therefore, how seniority should be counted. Is it from the date of joining the grade in which seniority is to be determined or is it from the date of acquisition of qualification for the post, irrespective of the date when the incumbent happens to be appointed to the grade. This is the short question that arises for consideration and decision of this Court in these two petitions.

3. The facts relevant for the purpose of deciding the sole issue in the writ petitions are, the petitioner-Dr. S.D. Nagaraj in W.P. No. 32753 of 1996 was appointed on 10-6-1971 as an Assistant Surgeon - local candidate. The third and fourth respondents were also appointed as Assistant Surgeons - local candidates on 10-8-1973 and 30-4-1975 respectively, in the respondent-Bangalore City

Corporation. Petitioner-Dr. A.M. Bel-Happa in W.P. No. 35139 of 1996, joined the service in the first respondent-Corporation as an Assistant Surgeon on 13-11-1972. He was placed in independent charge of the post of Medical Officer of Health on 8-2-1978 and he was regularly promoted to the post of Medical Officer of Health on 13-11-1987 in the pay scale of Rs. 2,450-4,190.

4. Among others, the appointments of the petitioners and the third and fourth respondents were regularised by the respondent-Corporation by its Official Memorandum No. B. 12(6)PR. 786/75-76, dated 31-12-1975,

5. The Corporation by issuing appropriate orders placed petitioner-Dr. Nagaraj in the independent charge of the post of Medical Officer of Health on 3-4-1979. Similarly, respondents 3 and 4 were also placed in independent charge of post of Medical Officer of Health on 7-7-1978 and 26-11-1979 respectively. By subsequent order dated 13-11-1987, petitioner and respondents were promoted to the cadre of Medical Officers in the pay scale of Rs. 2,450-4,190. The next higher category of post above that of Medical Officers of Health is the post of Deputy Health Officer. This post is required to be filled by promotion on seniority-cum-merit of officers in the lower cadre of Medical Officers of Health.

6. The respondent-Corporation on 20-2-1989, published a seniority list of Medical Officers of Health as on 1-1-1981. Petitioners were shown juniors to third and fourth respondents. Aggrieved by the ranking assigned, petitioners and others had filed their objections, objecting to the ranking assigned to them in the provisional seniority list. The Corporation unmindful of the objections filed proceeded to prepare and publish the combined seniority list of Assistant Surgeons and Medical Officers of Health as on 1-1-1981 by their Official Memorandum dated 30-11-1989. The validity or otherwise of the combined seniority list was questioned, among others, by the third and fourth respondents in their Writ Petition No. 21814 of 1989 and connected matters before this Court on the ground that the impugned seniority list prepared and published by the Corporation is contrary to the directions issued by this Court in several writ petitions filed by the employee officers, is in violation of Recruitment Rules of the Corporation and also is in violation of principles of natural justice. This Court by its order dated 24-7-1996 was pleased to allow the writ petitions and further, pleased to quash the combined seniority list prepared by the Corporation and further, directed the Corporation to prepare the fresh seniority list of Assistant Surgeons and Medical Officers of Health as on 1-1-1981 in accordance with law and in accordance with Service Regulations of the Corporation. The directions issued by this Court reads as under:

"ORDER

(a) Writ petitions are allowed. Rule made absolute.

(b) The impugned Official Memorandum is No. B. 12(8) PR.27:88-89, dated 30-11-1989 issued by respondent-Corporation of the City of Bangalore is quashed.

(c) A direction is issued to respondent-Corporation of the City of Bangalore to prepare and publish a fresh seniority list of Assistant Surgeons and Medical Officers of Health pursuant to its provisional seniority lists in the cadre of Assistant Surgeons and Medical Officers of Health as on 1-1-1981, prepared and published in its Official Memorandum dated 20-2-1989 after inviting objections from all the doctors who are likely to be adversely affected within two months from the date of receipt of this order. Liberty is also reserved to the respondent-Corporation either to prepare a separate seniority list of Assistant Surgeons and Medical Officers of Health or prepare and publish combined seniority list but only after intimating the same to all the concerned officials and after inviting their objections, if any.

(d) This order would not be taken as disturbing the promotions already effected to the next promotional cadre either basing on provisional seniority list of 20-2-1989 or the final seniority list of 30-11-1989 and promotions so effected are subject to final seniority list that would be prepared by respondent-Corporation pursuant to this order. Respondent-Corporation shall not effect any more promotions to the next promotional post of Deputy Health Officer till the final seniority list/lists are prepared and published as directed in this order.

(e) In the facts and circumstances of the case, there will be no order as to costs. Ordered accordingly".

7. After disposal of the writ petitions, the Corporation after preparing separate provisional seniority list of Assistant Surgeons and Medical Officers of Health has published the same by its Official Memorandum dated 12-10-1995, inviting objections, if any, from the officers/employees, if they are aggrieved by the ranking assigned to them in the provisional seniority list. The preparation of separate seniority list of Assistant Surgeons and Medical Officers of Health and the ranking assigned to them in the said seniority list was objected to by the petitioners and others. The respondent-Corporation after considering the objections so filed and after rejecting the same has now prepared and published the separate final seniority list of Assistant Surgeons and Medical Officers of Health as on 1-1-1981. In the list of Medical Officers of Health, Dr. Nagaraj, petitioner in W.P. No. 32753 of 1996 is assigned ranking at Sl. No. 7 and petitioner-Dr. A.M. Belliappa, petitioner in W.P. No. 35139 of 1996 is assigned ranking at Sl. No. 8 and the contesting respondents are assigned ranking above the petitioners. Aggrieved by the ranking assigned to them in the seniority list of Medical Officers of Health, petitioners are before this Court, inter alia seeking a writ to quash the seniority list prepared and published by the respondent-Corporation in their official memorandum dated 19-11-1996 and also to declare that they are seniors to respondents 3 and 4 and their ranking should be assigned in the seniority list above those two officers.

8. Respondents have filed their detailed statement of objections. In that, they justify the seniority list prepared and published by the respondent-Corporation. They primarily contend that they acquired DPH qualifications much earlier to the

petitioners and therefore, the ranking in the seniority list assigned on the basis of acquisition of DPH qualification and the date of entry into the cadre of Medical Officer of Health, is perfectly justified. Their learned Counsels Sri K. Subba Rao, Sri Reddy and Sri Ashok Haranahalli, further contend that as on today, petitioners and respondents have already been promoted to the next promotional post of Deputy Health Officers and further, the expression "rank" in Article 311(2) of the Constitution has a reference to a person's classification and not his particular place in the same cadre in the hierarchy of service to which he belongs and therefore, losing a few places in seniority list should not matter much to the petitioners and therefore, this Court should be slow in interfering with the seniority list prepared by respondent-Corporation for the reason that this Court generally does not issue futile writs. That apart, they contend that in the interest of smoothness and efficiency of such service, the settled seniority should not be lightly disturbed and unsettled.

9. In my view, it is now well-settled principle of law that the scope of judicial review and interference with the process of preparation of seniority list is very much unlimited. But this Court in exercise of its extraordinary jurisdiction can certainly find fault with the seniority list prepared by the employer, if the employer acted arbitrarily or unfairly or in violation of rules or failed to consider relevant factors or considered irrelevant factors, then the preparation of seniority list is vitiated and would be liable to be set aside by this Court.

10. Now to answer the core issue, the Service Regulations of the Corporation requires to be noticed. The Service Rules which govern the conditions of service of the parties to this lis, are known as Karnataka Municipal Corporation (Amendment) Rules, 1986, which has come into force with effect from 25-4-1987. Prior to the amendment, they were governed by City of Bangalore Municipal Corporation Services (General) (Cadre and Recruitment) Regulations, 1971, which had come into force with effect from 3-3-1971. These rules provided, inter alia, for recruitment and conditions of service of the Corporation employees in the city of Bangalore but also in the other City Corporations in the State. Section 2 is the dictionary clause in the regulations. It says that in these regulations, unless the context otherwise requires, the definition of some of the words should be understood as defined therein. Section 2(f) defines the meaning of the expression promotion to mean appointment of a Municipal Corporation servant from one post to a post in a higher scale of pay. Schedule appended to the regulations provides for category of posts, method of recruitment, minimum qualifications required for the post and the authority competent to appoint.

11. In the category of Health Department, the Schedule provides, among others, the posts of Health Officer, Deputy Health Officer, Medical Officer of Health (for short "MOH"), Medical Officer of Health (Maternity Home and Child Welfare Centres), Lady Doctors and Assistant Surgeons, etc. In these petitions, we are concerned mainly with the posts of Medical Officer of Health and Assistant Surgeons. The method of recruitment of Medical Officer of Health is 50% by

deputation from Government of Karnataka and 50% by promotions from Assistant Surgeons and Lady Doctors, possessing a medical degree or LMP with DPH qualification. The minimum qualification prescribed for the post is a medical degree of a recognised university and diploma in Public Health and a minimum of five years experience in the cadres of Assistant Surgeons or Lady Doctors. The qualification prescribed for the posts of Lady Doctors and Assistant Surgeons for direct recruitment is a degree in MBBS but the two posts namely, Medical Officer of Health and Assistant Surgeons were in the same scale of pay viz., Rs. 300-25-550-30-700.

12. In addition to the previous Rules 1971, the Government of Karnataka in exercise of its powers u/s 421 of the Karnataka Municipal Corporation Act, 1976, has promulgated rules known as the Karnataka Municipal Corporation Rules, 1977. Schedule appended to the Rules, only provides for category of posts, method of recruitment and the number of posts. The Schedule is silent insofar as minimum qualifications required for the posts. The rules have come into force with effect from 19-12-1977. In the Entry 16 in Schedule to Rules 1977, the posts of Assistant Surgeons, Health Officers and Medical Officers of Health are grouped in one category of posts. The method of recruitment for these posts, 50% by deputation and 50% by direct recruitment. These rules were further amended by Karnataka Municipal Corporations (Amendment) Rules, 1986, which has come into force with effect from 25-4-1987. The entry Sl. No. 16 in Schedule to Rules 1977, is substituted by 1987 Rules. Under 1987 Rules, the method of recruitment to the post of Medical Officer of Health is by promotion of Assistant Surgeons of the Corporation, who have put in a service of not less than five years and who possesses a degree in Medicine and diploma qualification in Public Health. The post of Assistant Surgeons is required to be filled up 50% by deputation and 50% by direct recruitment of persons, who possess the degree in Medicine. The 1987 Rules is more or less similar to 1971 Rules, Both these rules not only provide, the method of recruitment and also provided for minimum qualifications required for the posts of Medical Officer of Health and Assistant Surgeons. The 1987 Rules are not made retrospective. Therefore, they come into effect naturally prospectively. The effect of substitution of a rule or regulation has been explained by this Court in the case of Vijayakumar Shankarayya Sardar Vs. State of Karnataka, . In the said decision, the Court was pleased to observe that in Gayathri Ramaswamy v State of Karnataka and Others, it is held that law is always prospective in operation unless stated to be retrospective in the Act itself or inferred by necessary implication arising therefrom. The Court was further pleased to observe:

"10. In Gayathri Ramaswamy's case, supra. Act 31 of 1991 and the provisions thereto are referred to, to hold that the said provisions will come into effect from 5-2-1991, which only means that these provisions get incorporated into the parent Act as from 5-2-1991 and no more. The criticism of the learned Counsel for the petitioner and those assisting as Amicus Curiae is that, the attention of this Court was not drawn to the provisions of the parent Act after amendment at

all but only to the date on which the amending Act came into force".

11. In Statutory Constructions by Crawford at Section 78 it is stated.-

"Where a section or a statute is amended, the original ceases to exist and the new section supersedes it and becomes a part of the law just as if the amendment had always been there".

On the rule of Statutory Constructions it is useful to refer to *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, wherein it is observed.-

". . . . The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all".

In *Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited*, it was stated that:

"Now there is no question about the correctness of this dictum. But it appears to us that it has no application to this case. It is perfectly true as stated therein that whenever an amended Act has to be applied subsequent to the date of the amendment the various unamended provisions of the Act have to be read along with the amended provisions as though they are part of it. This is for the purpose of determining what the meaning of any particular provision of the Act as amended is, whether it is in the unamended part or in the amended part".

13. Now the question that requires to be considered is what is the effect of these amended provisions. The 1987 Rules of the Corporation were published by the State Governments by notification dated 25-4-1987. The Rules are known as Karnataka Municipal Corporations (Amendment) Rules, 1986. The Rules have come into force w.e.f. 25-4-1987 i.e., the day when they were notified for public. Under these Rules, the category of posts mentioned at Sl. No. 16 of 1977 Rules are substituted by the following category of posts, namely,

"16. Medical Officers of Health.--By promotion of an Assistant Surgeon of the Bangalore City Corporation who has put in a service of not less than five years as an Assistant Surgeon in the Bangalore City Corporation and who possesses a degree in Medicine and postgraduate qualification in Public Health".

(d) after the category of posts of "Medical Officers of Health" at Sl. No. 16 and the entries relating thereto the following shall be inserted, namely.-

"16-A. Assistant Surgeons.--Fifty per cent by deputation of officers from the cadre of Assistant Surgeons in the Department of Health and Family Welfare Services of the Government of Karnataka and Fifty per cent by direct recruitment of persons who possess the degree of Medicine".

14. The notification dated 25-4-1987 under which the Rules 1986 were notified had specifically mentioned that the amended Rules will come into effect "at once" namely, the date of the notification i.e., 25-4-1987, which only means that these provisions get engrafted into the parent Act or the Rules as from 25-4-1987 and no more.

15. The Supreme Court in the case of Koteswar Vittal Kamath Vs. K. Rangappa Baliga and Co., , considered the distinction between the super session of rule and substitution of the rule. In para 6 of the report, the following pertinent observations are found:

"The process of substitution consists of two steps. First, the old rule is made to cease to exist and next, the new rule is brought into existence in its place. Even if the new rule be invalid, the first step of the old rule ceasing to exist comes into effect and it was for this reason, that the Court held in Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, , that on declaration of new rule as invalid, the old rule could not be held to be revived".

16. The Supreme Court in the case of State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another, , was pleased to observe as under:

"The results that flow from changes in the law by way of "amendment", "repeal" or "substitution", "super session" on the earlier rights and obligations cannot be decided on any set formulate. It is essentially a matter for construction and depends on the intendment of the law, as could be gathered from the provisions in accordance with accepted cannons and construction".

17. Having noticed the rules and effect of substitution as declared by Apex Court, let me now come back to the first issue canvassed by Sri Bajentri, the learned Counsel for petitioners. The learned Counsel contends that in view of the Rules 1971, 1977 and Amendment Rules 1986, the Corporation was not justified in preparing and publishing two separate seniority lists of Medical Officers of Health and Assistant Surgeons as on 1-1-1981, and therefore, the employer should be directed to prepare combined seniority lists of Assistant Surgeons and Medical Officers of Health as on 1-1-1981 since the posts of Assistant Surgeons and Medical Officers of Health were always treated as a common cadre, firstly, in view of the similar pay scales for both the posts and in view of 1977 Rules of the Corporation wherein both the cadres were grouped and treated as common cadre till the rule substituted by Amendment Rules, 1986. This assertion of the learned Counsel is strongly resisted by Sri K. Subba Rao, learned Senior Counsel and Sri Reddy, learned Counsel for private respondents. They contend that though the pay scales of Medical Officers of Health and Assistant Surgeon are one and the same, and in spite of definition of the expression "promotion" under the rules, these posts should be treated as separate cadres, since under the 1971 Rules, the post of Medical Officer of Health is a promotional post and the same is required to be filled up 50% by deputation from officers working in the Government Service and 50% by promotion from the feeder cadre of Assistant

Surgeons and Lady Doctors, possessing a Medical Degree in LMP with DPK qualification and who have put in a minimum service of five years in the cadre of Assistant Surgeons and the post of Assistant Surgeons requires to be filled up by direct recruitment. They further contend though under the 1977 Rules, the posts of Assistant Surgeons, Medical Officer/Health Officer were clubbed and put in the same entry in the Schedule, in view of the substitution of the entry under the Amendment Rules, 1986, it should be presumed that the posts of Medical Officers of Health and Assistant Surgeons were always treated as two separate cadres and the method of recruitment under the substituted provisions for the post of Medical Officers of Health, is by promotion from the post of Assistant Surgeons of the Corporation, who have put in a service of not less than five years in the feeder cadre and who possesses a degree in Medicine and postgraduate qualification in Public Health and the learned Counsel Sri Reddy, took sufficient pains to explain the concept of "substitution" and the interpretation that requires to be adopted, when the rule is substituted by subsequent amendment by way of substitution. At the first blush, the submissions of the learned Counsel Sri Reddy looks very attractive, but a deeper consideration of the matter with reference to law declared by Apex Court in Koteswar Vittal Kamath's case, supra, it has no merit whatsoever. Therefore, it is difficult to accept the submission of learned Counsels appearing for the respondents.

18. What would be the effect of an amendment of a section, rule or regulation by substitution and other incidental incidences need not be decided by me in these petitions, firstly, for the reason, if I have to decide and express my opinion on the issue, whether the respondent-Corporation was justified in preparing and publishing two separate seniority lists of Assistant Surgeons and Medical Officers of Health, as on 1-1-1981, if the answer is in positive, then the difficulty may not arise, but if I have to take exception to the procedure adopted in preparing separate seniority lists and if I have to direct the respondent-Corporation to prepare and publish the combined seniority list of Medical Officers of Health and Assistant Surgeons as on 1-1-1981, the Assistant Surgeons, who would be really affected by such decisions are required to be before this Court at least as pro forma respondents. But for the reasons best known, petitioners have not impleaded the Assistant Surgeons and except one officer, none of the Assistant Surgeons, who are placed in the separate seniority list are before this Court either as petitioners or as respondents. In their absence, it may not be proper for me to express any opinion on the first issue canvassed by learned Counsel for petitioners, since the observation and the directions, if any, by this Court would affect the rights and interest of Assistant Surgeons, who have no grievance whatsoever in placing them in a separate seniority list as on 1-1-1981. Therefore I decline to express my opinion one way or the other for the present on the first issue canvassed by learned Counsel for petitioners.

19. Coming now to the other issue, as to whether the Corporation is justified in adopting the criteria of the date of acquisition of DPH qualification for assigning

the ranking to Medical Officers of Health while preparing and publishing the seniority list of Medical Officers of Health as on 1-1-1981 by their impugned official memorandum dated 19-11-1996, the discussion on this issue may be commenced by referring to incidents after disposal of W.P. No. 5759 of 1989 and connected matters. After disposal of W.P. No. 5759 of 1989 and connected matters, by an order made by this Court on 24-7-1996, the respondent-Corporation had thought it fit to prepare separate seniority list of Assistant Surgeons and Medical Officers of Health as on 1-1-1981. As a preliminary step, they had issued separate provisional seniority list of Assistant Surgeons and Medical Officers of Health, assigning particular rankings to the Assistant Surgeons and Medical Officers of Health, depending on the date of entry into service in the case of Assistant Surgeons and the date of acquiring qualification in the case of Medical Officers of Health. In these writ petitions, both the petitioners and the respondents are in the list of Medical Officers of Health. Dr. S.D. Nagaraj, petitioner in W.P. No. 32753 of 1996 is at Sl. No. 7 and Dr. A.M. Belliappa, petitioner in W.P. No. 35139 of 1996 is assigned ranking at Sl. No. 8. Both these petitioners had filed detailed objections to the preparation of separate provisional seniority list of Assistant Surgeons and Medical Officers of Health and further, objecting to the ranking assigned to them in the provisional seniority list below that of Dr. G. Lokesh and Dr. S.U. Kumaraswamy. The respondent-Corporation, as usual, making a show of consideration of the objections filed by the aggrieved employee officers, have proceeded to finalise, prepare and publish separate final seniority list of Assistant Surgeons and Medical Officers of Health as on 1-1-1981, maintaining the very ranking assigned to them in the provisional seniority list. In the case of Assistant Surgeons, for fixing the seniority, they have adopted a peculiar criteria for assigning the ranking in the seniority list. I need not dwell much on that, since petitioners though question the wisdom of the respondent-Corporation in preparing separate seniority list of Assistant Surgeons and Medical Officers of Health, have not impleaded the Assistant Surgeons as parties to this list, who would be affected by any observation of mine with regard to mode and criteria adopted and followed by the respondent-Corporation while preparing the seniority list of Assistant Surgeons. Therefore, I intend to confine my discussion for the disposal of these petitions, only insofar as the criteria adopted by the respondent-Corporation, while preparing the seniority list of Medical Officers of Health.

20. Petitioners and their learned Counsel assert that the respondent-Corporation while preparing the provisional and seniority list of Medical Officers of Health as on 1-1-1981, have adopted the criteria of fixing the seniority of the officers basing on the date of acquiring DPH qualification, which according to them is impermissible. The respondent-Corporation in its objections statement filed before this Court does not dispute this factual assertion. In fact, in their objections statement, they state on oath that "it is not correct to state that during the period 19-12-1977 to 25-4-1987, the posts of Assistant Surgeons and Medical Officers of Health were of the same rank. The date on which the

qualification was acquired is relevant for promoting a person as Medical Officer of Health. It is not correct to state that the date of acquisition of DPH qualification is irrelevant".

Dr. Lokesh, the third respondent in one of the writ petitions, in para 6 of the objections statement asserts that "This respondent acquired DPH qualification in January 1978, whereas both the petitioners acquired the said qualification in May 1980. The ranking in the seniority list is assigned on the basis of acquisition of DPH qualification and the date of entry into the cadre of MOH and hence, the ranking of this respondent is rightly fixed above the petitioner".

The fourth respondent-Dr. S.U. Kumaraswamy, in his objections statement contends that "This was also the position having regard to the seniority which was required to be fixed from the date on which the fourth respondent became eligible for promotion as Medical Officer of Health. Therefore, the Corporation has taken action strictly in accordance with law and in accordance with Cadre and Recruitment Regulations and the law that is laid down by this Hon"ble Court in the various writ petitions and also having regard to the finality of the position by several orders issued including the order of promotion to the fourth respondent as Deputy Health Officer makes it clear that the petitioner, who only could do the Diploma in Public Health in September 1980, could not and cannot claim seniority over and above the fourth respondent both in the cadre of Medical Officers of Health and Deputy Officer of Health and subsequent orders".

21. In the peculiar facts and circumstances of these cases, the first question that requires to be considered and decided is whether these respondents had been promoted into the cadre of MOH by the respondent-Corporation at any point of time during the relevant period. If the answer is "yes", the result is obvious, but if the answer is "no", then it would be difficult to sustain their claim that respondent-Corporation taking into consideration their date of entry into service as MOH, it has assigned ranking by placing them above the petitioners, since they were promoted regularly to the next promotion post of MOH. Then the second question that requires to be considered is whether the ranking assigned by the respondent-Corporation by taking into consideration the acquisition of DPH qualification by respective Assistant Surgeons is justiciable. To answer these precise legal issues, at this stage, it is proper to refer to the so-called promotions granted to petitioners and respondents 3 and 4 by the employer. The orders made by the respondent-Corporation in the case of contesting private respondents are produced before this Court as part of writ petition docket. The order made in the case of Dr. Lokesh reads as under:

"Corporation of the City of Bangalore

No. B12(4)PR. 53/78-79 Office of the Commissioner, Corporation Offices, Bangalore, dated 7th July, 1978. Memo Sub: Filling up the post of Medical Officer of Health (West) by placing Dr. G. Lokesh on independent charge of the duties of MOH (West) Range. Dr. G. Lokesh, Senior Most Assistant Surgeon

working at Ashok Nagar Sub-Health Office, is placed in independent charge of the duties of Medical Officer of Health (West) with immediate effect till the post is filled up regularly as per the Cadre and Recruitment Rules. Draft approved by The Deputy Commissioner (A) Sd/- for Commissioner, Corporation of Bangalore. Copy submitted to the Administrator for kind information. Copy to the P.A. to Commissioner/Deputy Commissioner (Development)/Deputy Commissioner (Administration) for information. Copy to the Health Officer/Deputy Health Officer, 1st and 3rd Chief Accounts Officer/Chief Auditor/Dr. G. Lokesh/B12(2)B12(GRL) MOH (West) MOH (East) Memo file. MOH (East) M 36/78-79".

22. Similar orders were passed in the case of petitioners and Dr. S.U. Kumaraswamy, The so-called promotion, which the private respondents claim is only on an in charge basis. The meaning of the expressions "incharge arrangement", "in charge basis" or "independent charge" have been explained by Apex Court in its several decisions. To understand this concept, let me notice for the purpose of this case one decision of the Apex Court. The Apex Court in the case of Ramakant Shripad Sinai Advalpalkar Vs. Union of India and others, , was pleased to observe as under:

"Asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. In such a case he does not get the salary of the higher post, but gets only that in service parlance is called a "charge allowance". Such situations are contemplated where exigencies of public service necessitate such arrangements and even consideration of seniority to not enter into it. The person continues to hold his substantive lower post and only discharges the duties of the higher post essentially as a stopgap arrangement".

23. In my opinion, the law on this point is now well-settled. In charge arrangement is not a recognition of right to a higher post. An in charge arrangement is not a recognition of or is necessarily based on seniority and that, therefore, no rights, equities, or expectations could be built upon it asking an officer who substantively holds a lower post merely to discharge the functions of a higher post cannot be treated as promotion. In such cases, he does not get the salary of higher post but gets only charge allowance. Therefore, merely because respondents 3 and 4 were placed in independent charge, in the post of Medical Officers of Health, a little earlier than the petitioners, they cannot claim as a matter of right that they had entered into the cadre of MOH much earlier to the petitioners and therefore, the ranking assigned to them in the seniority list by the respondent is justified. A bare reading of the so-called "promotion orders produced", which is not disputed by the respondent-Corporation is only an order keeping the respondents in the post of MOH on independent charge. This is not a promotion and it does not give them any right in the post. It is only in the year 1987, petitioners and the respondents by a common order were promoted to the post of Medical Officer of Health. Therefore, they cannot assert that they were

promoted regularly to the post of MOH from the date of the orders dated 7-7-1978 and 26-11-1979 and further contend that the respondent-Corporation was justified in assigning a higher rank by taking into consideration their entry into service in the cadre of MOH.

24. The other aspect of the matter which requires to be considered and decided is whether the criteria adopted by the respondent-Corporation in taking into consideration the acquisition of DPH qualification for assigning ranking in the seniority list is arbitrary or unfair in the absence of a rule or regulation providing for counting of service from the date of acquisition of the qualification for the entry into cadre. It is not in dispute that in the Service Rules of the Corporation, there is no such rule which makes provision for counting of seniority from the date of obtaining the qualification prescribed in the Schedule. If the Corporation had framed a rule or regulation prescribing one of the modes for fixing the seniority to be on the basis of counting service from the date of acquisition of qualification for the entry into the cadre, then there would not have been, any difficulty in accepting the criteria adopted by the Corporation while fixing the inter se seniority of the petitioners and respondents since such rules or regulations are held to be reasonable, but in the absence of such rule, since the parties are governed by the provisions of Karnataka Government Servants (Seniority) Rules, 1957, the respondent-Corporation is obliged to follow the criteria prescribed for fixing the seniority of the officers as prescribed in the aforesaid rule. In view of this, in my opinion, the criteria adopted by the Corporation is wholly arbitrary, unfair and unjust in the matter of assigning inter se ranking in the seniority list. Fixing the seniority on the basis of acquisition of DPH qualification by the Corporation, had come up for consideration by this Court in the case of *Dr. A. Jagannath and Others v State of Karnataka and Others*¹ and connected matters. In the said decision, the Court was pleased to observe:

"The acquisition of DPH qualification unless deputed is not possible. Uniform criteria is not adopted while selecting officers for deputation, seniority in the cadre has never been adhered to. The selection to the course has been arbitrary and whimsical. In such a situation the Corporation has to consider whether that can be insisted for reckoning seniority. It is true that appointment of unqualified candidate is not according to rules. The question is whether the Corporation itself having violated the rules can hold it against their employees? The Corporation will have to evolve a solution by which rights of employees and the guarantee under Articles 14 and 16 of the Constitution are not violated. Length of continuous service being the valid criteria for seniority, introduction of any other criteria, which have no legal sanction would be erroneous. As such the impugned gradation lists cannot be sustained".

25. In my view, acquiring a qualification prescribed under the rules or regulation cannot be the sole or automatic criteria for fixing the seniority. The acquisition of a qualification does not confer any right either for promotion or for fixing the seniority. The only benefit that accrues to the officers passing the qualifying

examination, is that one hurdle is removed from their way and they become eligible for being considered for promotion and nothing beyond that. Therefore, it is difficult to sustain the impugned seniority list of Medical Officers of Health as on 1-1-1981 prepared and published by the respondent-Corporation on 19-11-1996 by taking into consideration the date of acquisition of DPH qualifications by the petitioners and respondents. Therefore, the same requires to be set aside by this Court and further a direction requires to be issued to prepare a fresh seniority list of MOH as on 1-1-1981 in accordance with law.

26. In the result, petitions are allowed in part. Rule made absolute to that extent only. The final seniority list of Medical Officers of Health prepared and published by respondent-Corporation as on 1-1-1981 is quashed. The matter is remanded back to the Corporation to prepare and publish a fresh seniority list of Medical Officers of Health as on 1-1-1981 in accordance with law and in accordance with the Service Rules of the Corporation, keeping in view, the observations made by this Court in the course of this order as expeditiously as possible and at any rate within four months from the date of receipt of a certified copy of this Court's order. No order as to costs. Ordered accordingly.

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