

(1971) 06 AP CK 0014
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 197 of 1971

M.P. Ranga Rao

APPELLANT

Vs

P. Badrinarayan and Others

RESPONDENT

Date of Decision : 25-06-1971

Acts Referred:

Hyderabad Municipal Corporation Act, 1956 — Section 132(1), 132(2), 137

Citation : AIR 1972 AP 323

Hon'ble Judges : K.V.L. Narasimham, C.J; Alladi Kuppuswami, J

Bench : Division Bench

Advocate : T. Ananta Babu and I. Venkatanarayana and Principal Govt. pleader, for the Appellant; Upendralal Waghrav and Pulla Reddy, for the Respondent

Judgement

Alladi Kuppuswami, J.—These two appeals are directed against the judgment and order dated 25-6-1971 in W. P. No. 5890 of 1970. The third respondent in the writ petition is the appellant in W. A. No. 197 of 1971. The State of Andhra Pradesh who is the first respondent in the Writ Petition is the appellant in Writ Appeal No. 215 of 1971. The questions of consideration in both the Writ appeals are identical and hence both the appeals are considered together in this judgment.

2. The first respondent in both the with appeals is the petitioner in the Writ petition. He was appointed as a sub-overseer in the Municipal Corporation of Hyderabad in the year 1955. Later on this post was re-designated as Supervisor. In a vacancy in the post of Assistant City Planner, he was posted in July, 1970. He stated that the Standing Committee passed a unanimous resolution recommending his case for permanently posting him in the post and the Commissioner and Mayor also strongly recommended his case. After the suppression of the Municipal Corporation the Special Officer also recommended that the should be made permanent in that post. The Government, however passed an order posting the third respondent in the writ petition (appellant in the W. A. No. 197 of 1971) as the Assistant City Planner in G. O. Ms. No. 914 health,

Municipal Administration (L-2) Dept. dt. 8-12-1970. The first respondent herein filed the Writ Petition for the issue of a Writ of mandamus or other appropriate Writ, direction or order declaring that the action of the Government in posting the third respondent in the Writ Petition as Assistant City Planner under the said G. O. was illegal and void. He contended that the appointing authority in respect of the said post was the Corporation (Special Officer after suppression) and the Government has no powers to appoint the third respondent as the Assistant City Planner. Assuming, without admitting that the said post could be filled by the Government, it cannot post a person who is not a member of the local Government service or a municipal employee to the said post and as the third respondent was not a member of the local Government service he could not be appointed to the post. Lastly, it was contended that he could not be appointed also for the reasoning that he was not a Mulki within the meaning of Mulki rules.

3. It was contended on behalf of the third respondent as well as the Government that the Government was entitled to make the appointment u/s 132 of the Hyderabad Municipal Corporation Act and that the appointment was properly made. The contention that a person who is not a member of the local Government service or a Municipal employee or a Mulki cannot be appointed to the post was denied. They further contended that the petitioner was not possessed of the necessary qualifications for the post of Assistant City Planner. He was not posted in July, 1970 in the vacancy in the post of Assistant Planner, but was placed in additional charge of the post till alternative arrangements were made by the Government. In the circumstances they said that he had no locus standi to file the Writ Petition.

4. Our learned brother Vaidya, J., negated the contention of the Government that the petitioner had no locus standi. He held even assuming that the petitioner was asked merely to be in charge he could be relieved of that arrangement only by a properly appointed person and therefore, he was entitled to say that the appointment of the third respondent in the writ petition was not valid. He further, held that the post of Assistant City Planner, to which the third respondent was appointed was the post for which the appointing authority is the Corporation u/s 137 (5) of the Act read with Section 138 (1) and (3) of the Act, and hence the Government was not entitled to make the appointment. He also held that this was not a post to which Section 132 of the Act applies and the Government was not competent to make an appointment to this post under that section. He also held that in the circumstances of the case, it could not be held that the appointment was made u/s 132 (1) of the Act. He further observed that even assuming that the Government could make the appointment under Sec. 132 the third respondent to the writ petition could not be appointed as he was not a person belonging to the local government service. In the result he allowed the writ petition and passed an order quashing the G. O. Ms. 914/8-12-1970.

5. The above two appeals have been preferred by the third and first respondents respectively in the writ petition against the said order in W. P. No. 5890/70.

6. We found that the Municipal Corporation of Hyderabad Represented by the Special Officer who is the third respondent in W. A. No. 197/71 and the second respondent in W. A. No. 215/71 had not entered appearance. After hearing the arguments of counsel on behalf of the Government, the petitioner and the third respondent in the writ petition we felt it desirable that the Special Officer of the Corporation also should file an affidavit stating the circumstances in which the appointment of the third respondent came to be made. He accordingly filed an affidavit and we heard the counsel for the Special Officer also.

7. In order to appreciate the contentions of the appellants on the one hand and the first respondent on the other, it is necessary to set out the relevant provisions of the Hyderabad Municipal Corporation Act.

Section 130 (1): Those shall be constituted for the purpose of this Act, and of any law for the time being in force regulation the powers and duties of other local authorities a Local Government Service consisting of officers and servants of a Corporation who hold any of the posts specified in schedule "C" which may from time to time be amended by the Government in consultation with the Corporation.

(2) Government shall have the power to appoint, dismiss, and transfer and to take disciplinary action against officers belonging to the said service and prescribe conditions of their service.

(3) Unless it be otherwise prescribed under sub-section (2) the Hyderabad Civil Service Rules for the time being in force relating to the appointment and conditions of service and all rules for the time being in force relating to the conduct and enquiry into the conduct of Government servants shall apply to officers belonging to the Local Government Service.

Section 131 (1):

There shall be constituted a Local Government service fund to meet the expenditure in respect of salaries, allowances, pensions, provident fund, gratuity and other necessary expenditures payable to the officers and servants of Local Government Service appointed under the provisions of this Act or of any other law for the time being in force or rules made thereunder or by any order of the Government.

(2) The Corporation shall contribute 12 1/2% of its revenue towards the Local Government Service fund constituted under sub-section (1).

Provided that the Government may from time to time by a notification in the Official Gazette revise or alter the percentage of the contribution towards the Local Government Service fund.

Section 132 (1)

The Government may, in addition to the officers and servants specified in Schedule C appoint for the purposes of this Act and of any law for the time being

in force regulating the duties and powers of other local authorities, duly qualified person or persons to be Superintending Engineer, Chief Town Planner, Divisional Engineer, Assistant Engineers, Assistant town Planning Officers, Architects, Inspecting Officers or other officers for the whole or any part of the State and may sanction such establishment for the said officers as may be deemed necessary.

(2) The officers and establishment appointed under sub-section (1) shall belong to the Local Government Service and their expenses shall be defrayed from the Local Government Service Fund constituted u/s 131.

(3) The powers and duties of the officers mentioned in sub-section (1) shall be such as may from time to time be determined by the Government.

Section 137 (2):

The commissioner shall from time to time prepare and bring before the Standing Committee setting forth the number, designations, grades, fees and allowances of the officers and servants who should in his opinion be maintained and the amount, nature of the grades, fees and allowances which he purposes should be paid to each.

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Section 137 (5):

No new permanent officer with a minimum monthly salary exclusive of allowances of rupees one hundred or more shall be created without the sanction of the corporation and no new officer with a minimum monthly salary exclusive of allowances of rupees one hundred and ninety or more or with a maximum monthly salary exclusive of allowances of rupees three hundred and forty or more shall be created without the sanction of the Government.

Section 138 (1) : The power of appointing Municipal Officer and servants whether temporary or permanent whose minimum monthly salary, exclusive of allowances, is rupees one hundred and seventy or more but does not exceed rupees one hundred and eighty nine shall vest in the corporation.

Section 138 (2) : The power of appointing Municipal Officers and servants whether temporary or permanent whose minimum monthly salary exclusive of allowances is rupees one hundred or more but does not exceed rupees one hundred and sixty-nine- shall vest in the Standing Committee.

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Section 138 (3) : Save as otherwise provided in this Act the power of appointing the Municipal Officers and Servants whether temporary or permanent vests in the Commissioner.

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8. It is seen from the above provisions that the Government has the power to appoint officers and servants of corporation to hold any of the posts specified in Schedule "C" (vide Section 132). It has also the power to make appointments to the posts of Superintending Engineer, Chief Town Planner and other posts mentioned in Section 132 (1) or other officers, in addition to the officers and servants mentioned in Schedule "C". (Vide Section 132 (1)). It is admitted that the post of Assistant City Planner is not one of the posts mentioned in Schedule "C" and hence Section 130 (2) has no application. But it is contended on behalf of the Government that the post of Assistant City Planner is one regarding which appointment can be made u/s 132 (1) of the Act. On the other hand, the contention on behalf of the petitioner in the Writ Petition is that the post of Assistant City Planner is a post regarding which the Commissioner is the appointing authority. It is one of the posts dealt under the head "Municipal Officers and Servants" in Chapter IV of the Act commencing from Section 137, which are for the sake of convenience referred to as corporation posts in contradistinction to the posts referred in Sections 130 (2) and 132 (1) of the Act which are referred to as Government posts. It is the case of the petitioner in the Writ Petition that the sanction was obtained for the creation of the posts u/s 137 (5) (5) of the Act and the appointing authority is the Commissioner u/s 138 (3).

9. In order to ascertain whether the post of Assistant City Planner is a corporation post or a Government post, it is necessary to consider the circumstances and the manner in which the post came to be created.

10. Sri C. Narasimham, who was then the Secretary to the Government. Planning and Development Department, was asked to submit a report on various matters relating to Hyderabad Municipal Corporation including the means for improving the administration and finances of the Corporation. In the report in paragraph (77) of Chapter IX he pointed out that the Corporation has no Town Planning establishment and is dependent on the Government Town Planning Department under the Chief Town Planner. As the City was growing fast since 1958 when it became the capital of Andhra Pradesh State, he said it was desirable that it should have a Town Planning Department of its own. Consequently, the Government issued G. O. Ms. No. 27, Health Housing and Municipal Administration dated 6-1-1962 stating that it was desirable for the Municipal Corporation to have a Town Planning Department of its own and they accordingly directed the Municipal Corporation to set up a Town Planning Department as expeditiously as possible. By G. O. Ms. 328, M. A. dated 15-3-63 they sanctioned the creation of a post of Assistant Town Planner. Under G. O. Ms. 7 M. A., dated 3-1-1964, the post was upgraded to that of Town Planner. By a subsequent G. O. Ms. 32, M. A., dated 11-1-1965 it was directed that the Post of Town Planner be treated as a temporary addition to the post of Joint Director of Town Planning in the Andhra Pradesh Town Planning Service and the special rules governing recruitment to the post of Joint Director of Town Planning was to apply mutatis mutandis to the post of Town Planner. The post of Town Planner was subsequently redesignated as "City Planner".

11. On 7-5-1965 the Commissioner of the Municipal Corporation put up a note to the Standing Committee. In that he requested the Standing Committee to recommend to the general body for the sanction of five Assistant Town Planners, in addition to other staff. The Standing Committee to recommend to the general body for the sanction of five Assistant Town Planners, in addition to other staff. The Standing Committee in its proceedings dated 7-7-1965 recommended to the general body to approve the scheme submitted by the Commissioner with certain variations. It further observed:

"Meanwhile, for the posts which are within the purview of the Government, the Municipal Commissioner is authorised to correspond with the Government for their action in anticipation of sanction of the general body of the corporation. He is also authorised to fill up the posts which are within the powers of the Standing Committee pending approval of the general body of the Corporation."

The general body by its resolution dated-11-1965 approved the scheme of the Municipal Commissioner subject to certain variations which are not material for the purpose of these appeals. On 8-4-1965 the Government passed G. O. Ms. 383 HH & M. A., Dept. sanctioning the creation of five posts of Assistant Town Planners (one in the main office and the other four in the Municipal Circles) temporarily for a period of one year. On the recommendation of the Commissioner, the Government passed G. O. Ms. 75 M. A. dated 2-2-1967 upgrading these posts to those of Assistant Directors of Town Planning and they were also redesignated as Assistant City Planners. By the same G. O. the Director of Town Planning was requested to take expeditious action to fill in the posts of Assistant City Planners. If suitable candidates were not available for appointment in these posts, it was suggested that the posts may be filled in by direct recruitment through the Andhra Pradesh Public Service Commission, Hyderabad. By a memo dated 15-3-1967 the Government directed the Director of Town Planning to add the above five posts to the cadre strength of the Town Planning Department. By another memo Dated 13-7-1967 the Government stated that as the above posts are to be added to the cadre strength of the Town Planning Department the expenditure on these posts has to be met initially from Government funds and later on recovered from the Municipal Corporation of Hyderabad as in the case of Municipal Secretaries, & Public Health Engineers working in the Municipal Corporation of Hyderabad. It was therefore, necessary to make a provision in the budget for this purpose. The Director of Town Planning was to exercise disciplinary control over the persons holding these posts as in the case of Chief Engineer. Public Health Engineers and Municipal Secretaries in the Municipal Corporation of Hyderabad respectively.

On 24-8-1968 G. O. Rt. 767 M. A. was passed sanctioning continuance of these posts for a further period of one year. It was stated that the expenditure on this account was to be initially met from the State funds made under M. H. 71 Miscellaneous and unforeseen charges X (i) Local Government Service and recovered from Municipal Corporation of Hyderabad at the end of financial year.

In a letter written by the Director of Town Planning dated 16-9-1969 to the Special Secretary to Government. Health, Housing and Municipal Administration Department, he stated that the posts of City Planner and Assistant City Planners are deemed to be Government posts and added to the temporary cadre strength in the Directorate of Town Planning. The Government by its memo dated 24-10-1969 informed him that as the post of City Planner and Assistant City Planners in the Municipal Corporation of Hyderabad are Government posts, no further orders are considered necessary.

12. Subsequently, when it was sought to appoint an Assistant City Planner, the Mayor by his letter dated 31-7-1970 recommended to the Government strongly the case of the petitioner in the Writ Petition for appointment as Assistant City Planner. The Commissioner also recommended his case strongly by his letter dated 1-8-1970. By another letter dated 2-11-1970 the Special Officer also requested that the proposals of his predecessor for the appointment of Badrinarayan may be considered as he really deserves encouragement. It was also pointed that such a course of action would induce some of the deserving employees of the Municipal Corporation to work hard and exhibit their efficiency in discharge of their official duties. The Government, however, by G. O. Ms. 914 M. A. dated 8-12-1970 which is the order impugned, posted Sri Rangarao as the Assistant City Planner.

13. It was argued by Sri Upendralal Waghray that the circumstances set out above under which the post of Assistant city planners were created point to the conclusion that they were Corporation posts coming u/s 137 of the Act which were sanctioned by the Government u/s 137 (5) of the Act. He relied upon the note of the Commissioner D/- 7-5-1965 to the Standing Committee for recommending to the General Body for the sanction of five Assistant City Planner posts, the recommendation of the Standing Committee dated 7-7-1965 and the resolution of the General Body D/- 8-11-1965. He also stressed on the wording of the G. O. 383 which stated that the Government sanctioned the creation of live posts of Assistant Town Planners. which were later on designated as Assistant City Planners. In our view the G. O. creating the posts of Assistant Town Planners and the subsequent G. Os. redesignating them as Assistant City Planners clearly indicate that they were considered as posts u/s 132 (1) of the Act. G. O. 75 which designated these posts as Assistant City Planners directed the Director of Town Planning to fill in the posts and if suitable candidates were not available. by direct recruitment through the Andhra Pradesh Public Service Commission. He was asked to add the above posts to the cadre strength of the Town Planning Department and it was stated that the Director of Town Planning was to exercise disciplinary control over these persons and it was made clear by subsequent correspondence that these posts were Government posts.

It is true that the suggestion came from the Commissioner, Standing Committee and the General Body of the Corporation, but the proceedings of the Standing Committee themselves show that the authorities of the Corporation regarded

these posts as posts within the purview of the Government. The Commissioner was asked to correspond with the Government with regard to those posts for their action. If these posts are posts within the meaning of Section 137, the only requirement would be to obtain sanction of the Government for the creation of the posts. Once such a sanction is obtained the appointment would be in the hands of the Commissioner. But the entire proceedings of the various authorities of the Corporation and the correspondence set out above would clearly indicate that even they proceeded on the footing that the Government was the appointing authority. u/s 132 (1) the Government may in addition to the officers mentioned in schedule "C", appoint persons for the various posts mentioned in that section, as also "other officers." One of the posts referred to is the post of Assistant Town Planning Officer. The posts of Assistant City Planners with which we are concerned were originally designated as Assistant town Planners and were re-designated as Assistant City Planners. Thus, they are included in the expression "Assistant Town Planning Officers" referred to in Section 132 (1). Even otherwise, the government is empowered to appoint "other officers". There can therefore, be no doubt that the Government was empowered to appoint Assistant City Planners u/s 132, (1). This, they did under the various G. Os. referred to above. The mere fact that no reference is made in the G. Os. to Section 132 (1), is of no consequence. It is well settled that provided an authority has the power, the mere fact that the source of the power is not indicated does not make the exercise of the power invalid.

14. It was contended that the posts of Assistant City Planners were not created u/s 132 (1) as it was provided in the relevant G. Os. that the expenditure of this account was to be initially met from State funds, but later on recovered from the Municipal Corporation of Hyderabad. It was also pointed out that provision in the Corporation budget was made with reference to the salaries to be paid to the Assistant City Planners. It was therefore, argued that these posts were Corporation posts u/s 137. Our attention was drawn to Section 131. Our attention was drawn to Section 131 of the Act, which provides that a Local Government service fund is to be constituted to meet the expenditure in respect of salaries, allowances etc., payable to the officers and servants of local government service appointed under the provisions of the Act and the Corporation have to contribute 12% of its revenue towards this fund. It was argued that if these posts were Government posts u/s 132 (1), their salaries must be met only from the Local Government Service fund and cannot be recovered from the Corporation. Since such a provision was made it would follow that they were not intended to be government posts. We cannot accept this contention. In these appeals we are not called upon to decide the correctness or otherwise of the direction of the Government that the amount of salaries, allowance etc. payable to these officers should be recovered from the corporation.

Even assuming that they were in error in doing so, if the posts were created u/s 132 as we have already held the mere fact that the Government issued a direction for the recovery of salaries from the Corporation would not make the

posts any the less government posts u/s 132 (1) of the Act. Further, we are also informed that though Section 132 (1) provides that the Corporation should contribute 121/2% of its revenue towards the local Government service fund, by a subsequent G. O. the government restricted this contribution to the actual amounts spent by the Government under that head which would be much less than 121/2% of the revenue of the Corporation. The direction that the amount should be recovery from the Corporation is explainable with reference to relied on was that in the G. O. creating the posts the expression used is that the Government "sanction" the creation of posts and it was said that this is referable to Section 137 (5) of the Act which requires that the creation of the posts by the Corporation must be with the sanction of the Government. But the G. O. does not sanction the creation of the post of Corporation. Even in Section 132 (1) the expression "sanction" is used and it cannot therefore, be said that under the G. O. sanctioning the posts the Government was sanctioning creation of the posts by the Corporation.

15. It was then contended that even if the government was authorised to appoint the Assistant City Planners u/s 132 (1) of the Act and did so in fact, the appointment of the third respondent in the Writ Petition was contrary to the said provision, as he did not belong to the local government service. In support of this argument reliance was placed on Section 132 (2) of the Act which says that officers and establishment appointment under sub-section (1) shall belong to local Government service. The argument is based upon a misconception of the scope of Section 132 (2). The said section does not require that only persons belonging to the local government service shall be appointed as officers under Sec. 132 (1). All that it means is that the officers appointed under that section would thereafter belong to the local government service. That this is the correct interpretation, will be clear from a reading of Section 130 (1) which says that there shall be constituted a local government service consisting of officers and servants of a Corporation who hold any of the posts specified in Schedule "C". Thus the local Government service consists of officers who hold posts specified in Schedule" in any Corporation namely, Commissioner, Deputy Commissioner etc. Section 132 (2) gives power to the government to appoint certain other named officers mentioned in that section as well as other officers. Section 132 (2) says that these officers shall also belong to the local government service.

We cannot read this section as imposing a condition on the government viz., to appoint only persons belonging to the local government service as officers under this section. Regard with Sec. 130 (1) this argument would lead to the absurd result that persons who hold posts specified in Schedule "C" and who constitute the local government service only can be appointed as officers u/s 132 (1). Reference was also made to the Hyderabad Local Government Service (Declaration as State Civil Service) Act. Under this Act the local Government service is declared to be and shall be deemed to be a civil service of the State and the local government service fund shall form part of the consolidated Fund of the State. We do not think the provisions of this Act are of any help in

considering this question.

16. It was also contended that as the third respondent in Writ Petition is not a Mulki within the meaning of Mulki Rules he could not be appointed to the post. In this connection reference was made to Section 140 which says that the Hyderabad Civil Service rules and all rules for the time being in force relating to the conduct and inquiry into the conduct of government servants shall apply to Municipal Officers and servants. In our view this provisions is of no assistance to the petitioner in the writ petition for more than one reason. Firstly, this section applies to Municipal officers and servants. The heading "Municipal Officers and servants" occurs just above Section 137 and therefore, this expression can only relate to officers appointed under Sections 137 and 138. We have already held that these posts are not posts coming u/s 137 or Section 138, of the Act and hence Section 140 has no application. Secondly, under the section unless otherwise prescribed u/s 139. the Hyderabad civil Service Rules relating to appointment and conditions of service shall apply.

We do not find anything in the Hyderabad Civil Service Rules which provide that the appointments should be confined only to Mulokies. Such a provision is found only in the Hyderabad General Recruitment Rulers. Rule 5 provides that no person will be eligible for appointment to a State or a Subordinate Service unless he is an Indian National subject to the condition that such person should be in possession of a Domicile Certificate(i.e., Mulki certificate). But section 140 does not refer to the Hyderabad General Recruitment rules, which were admittedly in force when the Hyderabad Municipal Corporation Act was passed. If the intention was that those rules should govern the appointments to Municipal Officers and servants, reference would have been made to the said rulers. It was also stated that there are no rules prescribed u/s 139 of the Act, relating to Municipal Officers and Servants. No. other provision of law was brought to our notice which provides that Mulki rulers will apply to appointments of officers and servants of the corporation.

Further, the third respondent in the writ petition was not appointed for the first time to this post. He was already holding a post in the Town Planning service. He was appointed as Assistant City Planner in the sense that he was posted as Assistant City Planner. There can be no doubt that the Mulki rules have absolutely no application to the posting of the third respondent in the writ petition as Assistant City Planner.

17. In the view we have taken it is not necessary for us to consider the contention of Mr. T. Ananta Babu that the decision of the Full Bench of this Court in P. Lakshmana Rao Vs. State of Andhra Pradesh and Others, requires reconsideration.

18. Mr. Upendralal Weghray strenuously contended that if it were held that the posts of Assistant City Planners are government posts, there will be a serious inroad into the autonomy of the Municipal Corporation. He submitted that in the

larger interests of such autonomy which is essential for the smooth working of a democracy as many posts as ;possible should be under the control of the Corporation and there should be very little interference by the government. He also submitted that in the view we have taken the avenues of promotion to these posts would be completely closed to the employees of the Municipal Corporation. While, we realise the force of his contention we find it unable to take these circumstances into consideration in interpreting the terms of the statute.

The remedy in such cases would be to appeal to the legislature to see that proper amendments are made in the Statute to give greater effect to the autonomous character of the Municipal Corporation. While we have held that the posts are government posts and the government is entitled to make the appointments u/s 132 (1) of the Act we do not see anything which precludes the government from appointing employees of the Corporation to the said posts, if the government so chooses. Hence it cannot be said that the avenues of promotion of the Corporation employees to these posts will be closed. Our attention has also been drawn to the fact that the petitioner in the writ petitions was strongly recommended to the post by the Commissioner. Special Officer and the Mayor. We have no doubt that the Government will bear in mind the claims of the petitioner whenever appropriate occasion arises.

19. In the result we hold that the appointment of the third respondent in the writ petition as Assistant City Planner under the impugned G. O. is valid, and no case is made out for quashing the said G. O.

20. In the circumstances, the Writ appeals have to be allowed and the judgment and order in Writ Petition No. 5890/70 has to be set aside.

21. There will be no order as to costs. Advocate's fee Rs. 100/-.

22. Appeals allowed.