(1989) 01 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No''s. 12393 to 12400/87

M.S. Mahadeviah — APPELLANT

Vs

Bangalore City Corporation — RESPONDENT

Date of Decision : 18-01-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 16 (1), 226

Citation : (1989) ILR (Kar) 1239 : (1989) 2 LLJ 192

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Judgement

1. In view of the fact that these petitions can be disposed of on a short point the same are taken up for final hearing.

2. In these petitions under Article 226 of the Constitution the petitioners have sought for issuing a Writ of Mandamus directing the respondents to consider the case of the petitioners for promotion to the post of I Grade Revenue Inspectors in accordance with law and if found eligible to promote them from the date of placing them in additional charge and give all consequential benefits from 6th March 1980 and 19th March 1980 respectively.

3. It is not in dispute that in accordance with the Cadre and Recruitment Rules of Bangalore City Corporation of the year 1971, a post of I Grade Revenue Inspector has to be filled up by promotion from the cadre of II Grade Revenue Inspectors. The petitioners in W.Ps. 12393 to 12397 and 12400 were placed in additional charge of the post of I Grade Revenue Inspectors on 6th March 1980 as per Annexure-A. The petitioners in W.Ps. 12398 and 12399 of 1987 were placed in additional charge of the I Grade Revenue Inspectors on 19th March 1980 as per Annexure-B. It is not in dispute that since those dates the respective petitioners are working in the additional charge of I Grade Revenue Inspectors. During the pendency of these writ petitions all the petitioners came to be promoted as I Grade Revenue Inspectors as per the order dated 15th September 1987 bearing No. B12(1) PR : 85 : 86 produced as Annexure-A1 with effect from

15th September 1987. Therefore, the grievance of the petitioners that remains to be considered in these petitions is as to whether they ought to have been promoted as I Grade Revenue Inspectors with effect from the dates on which they were placed in additional charge of the posts in question.

4. Similar question arose in W.P. 7150 of 1969 decided on 23rd January 1973 Rama Bai v. State of Mysore and in W.P. 1407 of 1972 decided on 29th March 1974 Rasool Beigh v. Director of Industries & Commerce and it was held that was undesirable to continue officials belonging to lower cadre in a higher cadre unduly for a long period. In W.P. 7150/1969 it was held that there could be no reason to justify the action to continue an official in independent charge of the post for more than eight years. Even then such a practice is not discontinued. Therefore it is necessary to point out that continuing in in-charge or additional charge arrangements of officials belonging to lower cadre in a higher cadre and not filling up such vacancies in the higher cadre without any justification for a long period would undoubtedly result in the infraction of the fundamental rights guaranteed under Articles 14 and 16(1) of the Constitution. A civil servant who is due for consideration for promotion to a higher cadre and there is vacancy in the higher cadre. His case is required to be considered for promotion, in the absence of any valid obstacle or a justifiable ground coming in the way of considering for promotion, within a reasonable period depending upon the circumstances of each case. In such a situation continuation of him in the higher cadre by way of in-charge arrangement would no doubt result in infraction of Articles 14 and 16(1) of the Constitution as it amounts to denial of his right to be considered for promotion. That being the position, the omission on the part of the Corporation to consider the case of the petitioners for promotion and continuation of them only in additional charge as I Grade Revenue Inspectors are demonstrative of conscious violation of Articles 14 and 16(1) of the Constitution. The Corporation ought to have considered the case of the petitioners for promotion with effect from the dates on which they were placed in additional charge.

5. In addition to the aforesaid two decisions similar matter again came before this court in W.P. 13295/1987 N. Munikrishna v. Commissioner, Corporation of the City of Bangalore. This Court by the order dated 6th April 1978 following the aforesaid two decisions directed the Corporation to fill up all the posts of Assistants Revenue Officers by promotion in accordance with Cadre and Recruitment Rules of the Corporation within three months from the date or receipt of the order. Pursuant to the aforesaid order it is not in dispute that the Corporation has promoted all those officials to the post of Assistant Revenue Officer with effect from the date they were placed in additional charge of those posts by the order dated 13th June 1988 bearing No. B 12(1) TR 118/88-89. That being so, when the petitioners were promoted by the Corporation on 15th September 1987 by the order dated 15th September 1987 bearing No. B. 12(1) PR 85-85-86 Annexure-A1 they ought to have been considered for promotion with effect from the dates on which they were placed in additional charge of the posts.

6. The only excuse put forth by the Corporation for not considering the case of the petitioners with effect from the dates they were placed in additional charge of the posts is that they were placed in additional charge of posts in question when the Octroi Department was abolished in the year 1979, therefore it was not possible to consider their case, and that thereafter the Corporation sought for sanction for creation of additional posts of I Grade Revenue Inspectors and that sanction was accorded on 13th November 1984, therefore the case of the petitioners could not be considered for promotion with effect from the dates on which they were placed in additional charge of the posts. This overlooks the fact that these petitioners were placed in additional charge of the existing and vacant posts of I Grade Revenue Inspectors. It is not the case of the Corporation that there were other II Grade Revenue Inspectors who were seniors to the petitioners and they were required to be accommodated. Therefore, it is clear that there was no question of obtaining sanction for fresh posts. Hence, the contention of the Corporation is rejected. Thus, it follows that the Corporation has failed to consider the case of the petitioners for promotion to I Grade Revenue Inspectors from the dates on which they were placed in additional charge of the posts i.e., 6th March 1980 and 19th March 1980 respectively. Accordingly, these writ petitions are entitled to be allowed.

7. For the reasons stated above, these petitions are allowed, in the following terms :

The respondent shall consider the case of the petitioners in W.Ps. 12393/1987 to 12397/1987 and 12400/1987 with effect from 6th March 1980 and in case of petitioners in W.P. 12398/1987 and 12399/1987 with effect from 19th March 1980 for promotion to the cadre of I Grade Revenue Inspectors in accordance with law and the Cadre and Recruitment Rules of the Corporation and in the light of the observations made in this order within three months from today and to grant all the consequential benefits including the monetary benefits flowing therefrom.

