C. MUNIYAPPA NAIDU ETC. A

v.

STATE OF KARNATAKA AND ORS.

October 13, 1976

[P. N. BHAGWATI, V. R. KRISHNA IYER AND B
S. MURTAZA FAZAL ALI, JJ.]

City of Bangalore Municipal Corporation Services (General) Cadre and Recruitment Regulations, 1971, *Reg.* 3—*Absorption of Senior Health Inspectors by Corporation contrary to provision in Reg.* 3—*Effect of.*

The City of Bangalore Municipal Corporation Services (General) Cadre C
and Recruitment Regulations, 1971, framed under the City of Bangalore Municipal Corporation Act, 1949, came into force on 3rd March, 1971. In accordance with the practice of the Corporation prevailing before that date to have one half of the cadre of Senior Health Inspectors manned by deputation of Senior Health Inspectors from the Karnataka State Civil Service, the appellants were taken on deputation by the Corporation from the Karnataka State Civil Service. In 1974, the Corporation passed a resolution that the appellants would be absorbed by the Corporation if they were willing to accept their ranking as juniors to the Senior Health Inspectors of D
the Corporation, and the State Government accorded its sanction to the resolution of the Corporation as required by the Act. But coming to know that the chances of promotion of the permanent officials of the Corporation would be prejudicially affected by such absorption, the State Government withdrew its sanction accorded earlier. The appellants preferred writ petitions for quashing the withdrawal but the High Court dismissed the petitions.

In appeal to this Court, it was contended that the appellants became E
permanent employees of the Corporation and ceased to be Government servants as soon as the State Government accorded sanction to the Resolution of the Corporation and that therefore, the State Government could not, thereafter, by its unilateral action, reverse the process and annihilate the relationship of employer and employee between the Corporation and the appellants and restore their status as Government servants.

Dismissing the appeals, F

HELD : (1) The Resolution read with the Government sanction did not operate to put an end to the status of the appellants as government servants and to create the relationship of master and servant between the Corporation and the appellants, and therefore, it was competent to the State Government to withdraw the sanction accorded earlier; and this would be so irrespective of whether the appellants expressed their willingness to be absorbed as Senior Health Inspectors by the Corporation or not. [797 BC]

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(a) Regulation 3 of the Regulations which were in force when the Resolution was passed by the Corporation recognised only two modes of recruitment to the post of Senior Health Inspectors namely, by promotion from the cadre of Junior Health Inspectors and by deputation. Therefore, to absorb Senior Health Inspectors from the State Directorate of Health Services as permanent employees of the Corporation would be plainly contrary to the express mandate of this statutory provision. [796 C & F]

(b) It could not be urged that because they were already on deputation H
in the cadre of Senior Health Inspectors under the Corporation, their absorption as permanent Senior Health Inspectors did not constitute fresh entry into the cadre so as to require compliance with the Regulations. Not only

A their entry but also their continuance in the cadre of Senior Health Inspectors on the Corporation establishment depended on their being on deputation, because, it is only by way of deputation that Senior Health Inspectors from the State Directorate of Health Services can find place in the cadre of Senior Health Inspectors on the establishment of the Corporation. Since absorption is appointment, without amendment of the Regulations permitting appointment of Senior Health Inspectors drawn from the State Directorate of Health Services as permanent Senior Health Inspectors under the
B Corporation, the appellants could not be absorbed on the Corporation Establishment. [796 G—H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 761 of 1976.

(Appeal by Special Leave from the Judgment and Order dated 28-5-1976 of the Karnataka High Court in Writ Appeal No. 665/75).

C CIVIL APPEAL NOS. 845-854 of 1976.

(Appeals by Special Leave from the Judgment and Order dated 28-6-1976 of the Karnataka High Court in Writ Appeal Nos. 247, 237, 241, 243-246, 248 and 250/76 respectively.)

S. V. Gupte, S. B. Wad, A. K. Ganguli and *Mrs. Jayashree Wad,*
D for the Appellants in all the Appeals.

M. P. Chandrakantraj Urs and *B. R. G. K. Achar,* for Respondents 1 to 3 in CA 761/76.

Narayan Nettar, for Respondent 4 in CA. No. 761/76.

E *A. K. Sen, M. P. Chandrakantraj Urs* and *Narayan Nettar,* for the respondents in CA. No. 845/76.

M. P. Chandrakantaraj Urs and *Narayan Nettar,* for Respondents 1-3 in CAs 846-849/76.

B. R. G. K. Achar for Respondent 1 in CAs. 850-854/76.

F *M. P. Chandrakantaraj Urs* and *Narayan Nettar,* for Respondents 1-3 in CAs. 850-854/76.

Narayan Nettar for Respondent 7 in CAs. 845-846/76.

The Judgment of the Court was delivered by

G BHAGWATI, J.—This group of appeals raises a common question of law affecting Senior Health Inspectors on deputation with the Municipal Corporation of the City of Bangalore (hereinafter referred to as the Corporation). The facts giving rise to the appeals are identical and may be briefly stated as follows.

The appellants are Senior Health Inspectors in the Karnataka
H State Civil Service. It seems that prior to 3rd March, 1971, when the City of Bangalore Municipal Corporation Services (General) Cadre and Recruitment Regulations, 1971 (hereinafter referred to as the Cadre and Recruitment Regulations) came into force, the practice

of the Corporation was to have one half of the cadre of Senior Health Inspectors manned by deputation of Senior Health Inspectors from the Karnataka State Civil Service and in accordance with this practice, the appellants were taken on deputation by the Corporation from the Karnataka State Civil Service. While the appellants were working as Senior Health Inspectors on deputation, the Corporation passed a resolution dated 30th December, 1974 approving the report of the Commissioner that sixteen Senior Health Inspectors, including the appellants, who were working under the Corporation on deputation should "be absorbed in the interest of work if they are willing on their own pay and accept their seniority as Juniors to the Senior Health Inspectors of the Corporation." It is the case of the appellants that on the same day, immediately after the passing of this Resolution, they addressed a communication to the Mayor of the Corporation intimating to him that they were willing to be absorbed as Senior Health Inspectors under the Corporation on their own pay and with ranking below the Senior Health Inspectors of the Corporation. The factum of this communication was disputed by the Corporation as well as by the State Government, but in the view we are taking, it will not be necessary for us to examine this question. To continue further with the narration of facts, the Corporation sent the Resolution dated 30th December, 1974 to the State Government for according its sanction and the State Government by an order dated 6th May, 1975 accorded sanction "to the Corporation's resolution dated 30th December, 1974 regarding the absorption of the Senior Health Inspectors" mentioned in the Resolution under section 89 of the City of Bangalore Municipal Corporation Act, 1949 (hereinafter referred to as the Act). The term of the Corporation in the meantime came to an end and since fresh elections were not held to elect the members of the Corporation, an administrator was appointed by the Government to manage the affairs of the Corporation. The administrator requested the State Government to defer implementation of the proposal contained in the Resolution dated 30th December, 1974 since the permanent officials of the Corporaion were considerably disturbed by this proposal as it prejudicially affected their chances of promotion by reason of the absorption of sixteen deputationist Senior Health Inspectors from the Karnataka State Civil Service. The State Government on the basis of the communication addressed by the Administrator in this behalf passed another order dated 25th August, 1976 withdrawing the sanction accorded under the earlier order dated 6th May, 1975. The appellants being prejudicially affected by the withdrawal of the sanction, preferred writ petitions in the High Court of Karnataka contending that as soon as the State Government gave its sanction on 6th May, 1975 to the Resolution of the Corporation dated 30th December, 1974, they were absorbed as permanent employees of the Corporation and they ceased to be Government servants and the State Government thereafter had no authority to withdraw the sanction granted by it under the earlier order dated 6th May, 1975 and the subsequent order dated 25th August 1975 was invalid and inoperative. These writ petitions came up for hearing before a Single Judge of the High Court who rejected them by a judgment dated 22nd September, 1975. The appellants thereupon preferred appeals under section 4 of the Karnataka High Court Act,

A 1961, but the appeals were unsuccessful and they were rejected by a Division Bench of the High Court by a judgment dated 28th May, 1976. Hence the present appeals by the appellants with special leave obtained from this Court.

The principal question which arises for determination in these appeals is whether the appellants who are Senior Health Inspectors B mentioned in the Resolution of the Corporation dated 30th December, 1974 became permanent employees of the Corporation and ceased to be Government servants as soon as the State Government passed the order dated 6th May, 1975 according its sanction to the Resolution of the Corporation. There can be no doubt that if the effect of the Government order dated 6th May, 1975 was to snap the status of the appellants as Government servants and to absorb them as permanent C employees of the Corporation, the State Government could not thereafter by its unilateral action reverse the process and annihilate the relationship of employer and employee between the Corporation and the appellants and restore their status as Government servants. The main issue which, therefore, falls for determination is as to what legal effect flowed from the Government order dated 6th May, 1975 : did it have the effect of absorbing the appellants as permanent employees of D the Corporation with simultaneous termination of their employment as Government servants ? To answer this issue it is necessary to refer to a few relevant provisions of the Act and the Cadre and Recruitment Regulations.

The provisions in regard to the establishment of the Corporation are to be found in sections 84 to 95 of the Act. Section 84 provides E for appointment of a Health Officer, an Engineer, a Revenue Officer and other heads of departments working under the Commissioner while section 85 deals with special superior appointments. We are not concerned with either of these two sections since Senior Health Inspectors do not fall within the categories of officers dealt with in these two sections. Section 86 provides that if a vacancy occurs in any office specified in sections 84 and 85 or in any office under the Cor- F poration the maximum monthly salary of which exceeds two hundred and fifty rupees, the Corporation shall, subject to the confirmation of the Government, within two months of the date of occurrence of the vacancy, appoint a duly qualified person to hold such office. The office of Senior Health Inspector is undoubtedly an office the maximum monthly salary of which exceeds two hundred and fifty rupees and, therefore, a vacancy in that office is liable to be filled by the Corpora- G tion, subject to confirmation by the Government, under this section. Sections 87 and 88 are not material for our purpose and we need not pause to consider them. Section 89 says that, subject to the provisions of sections 84, 85, 86 and 88, appointments to the Corporation establishment shall be made by the Corporation if the maximum monthly salary of the office exceeds two hundred and fifty rupees. It is clear on a conjoint reading of sections 86 and 89 that it is the Corporation H which is entitled to make appointment to the office of Senior Health Inspector and such appointment is subject to confirmation by the Government. Then comes section 90 which provides that the Commissioner shall from time to time lay before the Standing Committee

a Schedule setting forth the designations and grades of officers and servants who should in his opinion constitute the Corporation establishment and embodying his proposals in regard to salaries, fees and allowances payable to them and the Standing Committee may either approve or amend such Schedule as it thinks fit and shall lay it before the Corporation and the Corporation shall then sanction such Schedule with or without modifications and may also from time to time amend it at the instance of the Commissioner and the Standing Committee. There is a proviso to this section which says that no new office shall be created without the sanction of the Government, if the maximum monthly salary exceeds two hundred and fifty rupees. This proviso, however, has no application in the present case, since the Schedule sanctioned by the Corporation set out the office of Senior Health Inspector and the absorption of the appellants as Senior Health Inspectors on the Corporation establishment did not involve the creation of any new office which was not already enumerated in the Schedule. Section 91 provides that no officer or servant shall be entertained on the Corporation establishment unless he has been appointed under section 84, 85, 86 or 88 or unless his emoluments are included in the Schedule sanctioned under section 90. But this section also does not stand in the way of the absorption of the appellants as Senior Health Inspectors on the Corporation establishment, since they are purported to be absorbed by the Corporation by its resolution dated 30th December, 1974 and the Government Order dated 6th May, 1975 is tantamount to confirmation of such absorption and hence section 86 is complied with and the office and emoluments of Senior Health Inspector are also included in the Schedule sanctioned under section 90. The other sections dealing with the establishment of the Corporation are not material except section 94 which confers power on the Standing Committee to frame regulations in respect of the Corporation establishment in regard to various matters. It will, therefore, be seen that there is nothing in the Act which debarred absorption of the appellants as permanent employees of the Corporation under the Corporation Resolution dated 30th December, 1974 read with the Government Order dated 6th May, 1975.

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But the argument of the State Government and the Corporation was, and this argument found favour with the Division Bench of the High Court, that until the Cadre and Recruitment Regulations were amended, it was not competent to the Corporation to absorb the appellants as permanent Senior Health Inspectors on the establishment of the Corporation and the Resolution of the Corporation dated 30th December, 1974, though sanctioned by the Government by its order dated 6th May, 1975, was not effective to bring about absorption of the appellants as permanent employees of the Corporation with simultaneous termination of their service as Government servants. This argument requires consideration of some of the relevant provisions of the Cadre and Recruitment Regulations. The Cadre and Recruitment Regulations were framed under sections 7, 84, 85, 88 and 94 of the Act and they were sanctioned by the State Government under section 94(g) of the Act and they came into force with effect from 3rd March, 1971 being the date on which they were published in the Government

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A Gazette. Regulation 3 laid down the method of recruitment and minimum qualifications for recruitment to various posts enumerated in the Schedule. One of the posts enumerated in the Schedule was the post of Senior Health Inspector and it was provided in Column 2 of the Schedule that the method of recruitment to the post of Senior Health Inspector shall be :

B "50% by promotion from the Cadre of Junior Health Inspectors of the Corporation,

50% by deputation from the State Directorate of Health Services."

The Cadre and Recruitment Regulations thus recognised only two modes of recruitment to the post of Senior Health Inspector, namely, C promotion from the cadre of Junior Health Inspectors and deputation from the State Directorate of Health Services and one half of the cadre was to be drawn from each of these two sources. No other mode of recruitment could be resorted to by the Corporation under the Cadre and Recruitment Regulations. It is difficult to see how in the face of this provision which has admittedly statutory effect, the posts of Senior Health Inspector could be filled in by absorption of deputa- D tionist Senior Health Inspectors from the Karnataka State Civil Service. Senior Health Inspectors from the State Directorate of Health Services could only be on deputation to the extent of one half of the number of posts of Senior Health Inspectors on the Corporation establishment and they could not be absorbed as permanent Senior Health Inspectors under the Corporation without violating the aforesaid statutory provision. This statutory provision does not contemplate any Senior E Health Inspectors on the establishment of the Corporation who are drawn from the State Directorate of Health Services otherwise than on deputation and to absorb Senior Health Inspectors from the State Directorate of Health Services as permanent employees of the Corporation (otherwise than on deputation), would be plainly contrary to its express mandate. It was, however, contended on behalf of the appellants that when they were absorbed as permanent Senior Health F Inspectors on the establishment of the Corporation, they were already in the cadre of Senior Health Inspectors under the Corporation, filling 50% of the posts and their absorption as permanent Senior Health Inspectors did not constitute fresh entry into the cadre so as to require compliance with the Cadre and Recruitment Regulations. The position, according to the appellants, was similar to that of an employee who is initially officiating in a post in a cadre and is subsequently confirmed G in the post. This contention, we do not think, is well founded. It is only by way of deputation that Senior Health Inspectors from the State Directorate of Health Services can find place in the Cadre of Senior Health Inspectors on the establishment of the Corporation. Not only their entry but also their continuance in the cadre of Senior Health Inspectors on the Corporation establishment depends on their being on deputation. There is no scope under the Cadre and Recruitment H Regulations for their absorption as permanent Senior Health Inspectors under the Corporation. In fact, it is impermissible to do so. The category of Senior Health Inspectors, who are regular employees of the Corporation, can be drawn only by promotion from Junior Health

Inspectors and that too, to the extent of only one half the number of posts. It is, therefore, obvious that without amendment of the Cadre and Recruitment Regulations permitting appointment—and absorption is really nothing but appointment—of Senior Health Inspectors drawn from the State Directorate of Health Services as permanent Senior Health Inspectors under the Corporation, the appellants could not be absorbed as permanent Senior Health Inspectors on the Corporation establishment. The conclusion must irresistibly follow that the Resolution of the Corporation dated 30th December, 1974 read with the Government order dated 6th May, 1975 did not operate to put an end to the status of the appellants as Government servants and to create the relationship of master and servant between the Corporation and the appellants and in the circumstances, it was competent to the State Government to pass the Order dated 25th August, 1975 withdrawing the sanction granted by it under the earlier Order dated 6th May, 1975. This view taken by us renders it unnecessary to consider whether the communication dated 30th December, 1974 was addressed by the appellants to the Mayor of the Corporation expressing their willingness to be absorbed as Senior Health Inspectors under the Corporation on the terms set out in the Resolution dated 30th December, 1974. Even if any such communication was sent, it could have no legal effect because, as already pointed out by us, the appellants could not be absorbed as permanent Senior Health Inspectors under the Corporation, unless and until the Cadre and Recruitment Regulations were first amended so as to permit such absorption.

The appeals are accordingly dismissed, but in the peculiar facts and circumstances of the case, we make no order as to costs.

V.P.S. *Appeals dismissed.*