



IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 22<sup>ND</sup> DAY OF JUNE, 2012

BEFORE

THE HON'BLE MR. JUSTICE H.N. NAGAMOHAN DAS

W.P.Nos.18046-18052/2011 c/w

W.P.Nos.18476-18482/2011,

W.P.Nos.19962-19965/2011(S-RES)

WP Nos 18046-18052 OF 2011

BETWEEN

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- 1 ARASUKUMARI  
D/O MAHADEVA SWAMY H S  
AGED 39 YEARS,  
WORKING AS ASST. REVENUE OFFICER  
CENSUS SECTION, MYSORE CITY CORPORATION,  
MYSORE
- 2 KUMARA SWAMY P  
S/O LATE PAPANNA  
AGED 48 YEARS,  
WORKING AS SUPERINTENDENT  
REVENUE SECTION,  
MYSORE CITY CORPORATION  
MYSORE
- 3 SURESH BABU H V  
S/O VENKATASHESHAIAH H K  
AGED 48 YEARS,  
WORKING AS ASST. REVENUE OFFICER

ZONE-1, MYSORE CITY CORPORATION  
MYSORE

- 4 PRASAD M  
S/O LATE MUNIKRISHNAPPA M  
AGED 30 YEARS,  
FIRST GRADE REVENUE INSPECTOR ZONE-3  
MYSORE CITY CORPORATION  
MYSORE
- 5 YOGENDRA T  
S/O LATE THAMMANNA M  
AGED 40 YEARS,  
WORKING AS FIRST DIVISION ASSISTANT  
ZONE-2 MYSORE CITY CORPORATION  
MYSORE
- 6 NAGENDRA SWAMY T N  
S/O LATE NARAYANA SWAMY  
AGED 39 YEARS,  
WORKING AS SECOND DIVISION ASSISTANT  
ZONE-3 MYSORE CITY CORPORATION  
MYSORE
- 7 MAHADEVA SWAMY S/O MAHADEVIAIAH  
AGED 36 YEARS,  
WORKING AS SECOND DIVISION ASSISTANT  
ZONE-6 MYSORE CITY CORPORATION  
MYSORE

... PETITIONERS

(By Sri : PADMANABHA MAHALE, SR.COUNSEL  
FOR Sri: S N BHAT, ADV. )

AND :

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- 1 THE STATE OF KARNATAKA  
REP. BY ITS SECRETARY.,  
URBAN DEVELOPMENT DEPT.  
M.S.BUILDING, VIDHANA VEEDHI  
BANGALORE
  
- 2 THE COMMISSIONER  
MYSORE CITY CORPORATION  
MYSORE .. RESPONDENTS

(By Sri : S.VIJAY SHANKAR, ADVOCATE GENERAL  
FOR Sri RAVINDRANATH P.V., HCGP FOR R1  
Sri : H C SHIVARAMU, ADV., FOR R2 )

THESE WRIT PETITIONS FILED U/A 226 & 227 OF  
CONSTITUTION OF INDIA PRAYING TO DECLARE THAT  
THE RULES TITLED AS "THE KARNATAKA MUNICIPAL  
CORPOATATIONS [COMMON RECRUITMENT OF OFFICERS  
& EMPLOYEES] RULES 2011" PUBLISHED IN THE  
KARNATAKA GAZETTE DT.11.4.11 UNDER NOTIFICATION  
DT.11.4.11 VIDE ANN-A ARE ULTRA VIRES OF THE  
CONSTITUTION OF INDIA & THE PROVISIONS OF THE  
KARNATAKA MUNICIPAL CORPORATIONS ACT 1976.

WP Nos. 18476-18482 OF 2011

BETWEEN

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- 1 THE MYSORE MAHANAGARA PALIKE  
OFFICERS & EMPLOYEES ASSOCIATION ®  
REP. BY SRI B HANUMANTHEGOWDA  
VICE PRESIDENT  
NAGARAPALIKE OFFICE PREMISES,

SAYYAJIRAO ROAD,  
MYSORE 570 024

- 2 SRI RAGHAVENDRA R  
S/O LATE RAMASWAMY S.B.  
AGED ABOUT 50 YEARS  
WORKING AS ASSISTANT REVENUE OFFICER,  
ZONE 08, MYSORE CITY CORPROATION  
MYSORE 570 024
- 3 SRI VENKATESH S.D.  
S/O SRI DODDAIAH  
AGED ABOUT 37 YEARS  
WORKING AS FIRST GRADE REVENUE  
INSPECTOR, ZONE 06, MYSORE CITY  
CORPORATION, MYSORE 570 024
- 4 SRI SIDDARAJU M S  
S/O SRI P SIDDACHAR  
AGED ABOUT 43 YEARS  
WORKING AS ASSISTANT REVENUE OFFICER  
ZONE 07, MYSORE CITY CORPORATION  
MYSORE 570 024
- 5 SMT MALATHI H  
W/O GOPALA KRISHNA  
AGED ABOUT 53 YEARS  
WORKING AS FIRST GRADE REVENUE  
INSPECTOR, C.F.W.B. FAMILY  
PLANNING CENTRER, TILAKNAGAR,  
MYSORE CITY CORPORATION,  
MYSORE 570 024

- 6 SMT MANJULA S  
W/O SRI RAJESH M S  
AGED ABOUT 31 YEARS  
WORKING AS FIRST GRADE REVENUE  
INSPECTOR ZONE 06,  
MYSORE CITY CORPORATION  
MYSORE 570 024
- 7 SRI SATISH M S  
S/O LATE SRI SRINIVAS T  
AGED ABOUT 46 YEARS  
WORKING AS ASSISTANT REVENUE OFFICER,  
ZONE 03, MYSORE CITY CORPORATION  
MYSORE 570 024 ... PETITIONERS

(By Sri :VIJAYA KUMAR, ADV., FOR  
Sri B B BAJENTRI, ADV.)

AND :

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- 1 THE STATE OF KARNATAKA  
REP BY ITS PRINCIPAL SECRETARY  
URBAN DEVELOPMENT DEPARTMENT  
VIKAS SOUDHA, BANGALORE 560 001
- 2 THE COMMISSIONER,  
MYSORE CITY CORPORATION  
SAYYAJIRAO ROAD,  
MYSORE 570 024  
MYSORE DISTRICT  
... RESPONDENTS

(By Sri : S.VIJAY SHANKAR, ADVOCATE GENERAL  
FOR Sri RAVINDRANATH P.V., HCGP FOR R1  
Smt M.P.GEETHA DEVI, ADV. FOR R2)

THESE WRIT PETITIONS FILED U/A 226 & 227 OF CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO CONSIDER THE OBJECTIONS AND SUGGESTIONS MADE BY THEM TO THE DRAFT KMC RULES, 2010 (ANNEXURE-E & F) AND ETC.

WP Nos 19962-19965 OF 2011

BETWEEN

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- 1 B BALAKRISHNA GOWDA  
S/O. KEPU GOWDA,  
AGED ABOUT 46 YEARS,  
WORKING AS TOWN PLANNING  
OFFICER MANGALORE CITY  
CORPORATION, LALBAGH,  
MANGALORE & R/AT: "SHRI  
MANGALA" D.NO.2-18-1560/2,  
1ST "B" CROSS, KAPIKAD, BIJAI,  
MANGALORE 575004
  
- 2 MANJUNATHA SWAMY S.E  
AGED ABOUT 43 YEARS,  
S/O. ESHWARAPPA,  
WORKING AS ASST TOWN  
PLANNING OFFICER MANGALORE CITY  
CORPORATION, LALBAGH  
MANGALORE & R/AT: PLOT  
NO.002, JYOTHI KIRAN APARTMENT  
HAT HILL, 3RD MAIN ROAD,  
MANGALORE 575006

3 P.B. SHIVARAJ  
 AGED ABOUT 46 YEARS,  
 S/O. LATE BABU P  
 WORKING AS ASST TOWN PLANNING  
 OFFICER, MANGALORE CITY  
 CORPORATION, LALBAGH  
 MANGALORE 575003 &  
 R/AT: PLOT NO.203  
 MOSACO APARTMENTS  
 NEHRU AVENUE CROSS RD  
 LALBAGH, MANGALORE 575003.

4 DILEEP S. GADYAL  
 AGED ABOUT 46 YEARS,  
 S/O. SONAVVA  
 WORKING AS ASST TOWN  
 PLANNING OFFICER MANGALORE  
 CITY CORPORATION, LALBAGH  
 MANGALORE 575003 &  
 R/AT: T.B. NO.1, CITY CORPORATION  
 QUARTERS, PANDESHWAR  
 MANGALORE 575001

... PETITIONERS

(By Sri : M. NARAYANA BHAT, ADV. FOR  
 M/S.SUBBA RAO & CO. ADV. )

AND :

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1 THE STATE OF KARNATAKA  
 REPRESENTED BY ITS SECRETARY  
 DEPARTMENT OF URBAN DEVELOPMENT  
 & MUNICIPAL AUTHORITIES ROOM  
 NO.401, VIKASA SOUDHA,  
 BANGALORE 560001

2 THE DIRECTOR  
DEPARTMENT OF MUNICIPAL  
ADMINISTRATION, GOVERNMENT OF  
KARNATAKA, 9TH FLOOR, VISHVESVARAIAH  
TOWER DR. AMBEDKAR VEEDHI,  
BANGALORE 560001

3 THE CORPORATION OF CITY OF MANGALORE  
REPRESENTED BY ITS COMMISSIONER  
LALBAGH, MANGALORE 575003

... RESPONDENTS

(By Sri : S.VIJAY SHANKAR, ADVOCATE GENERAL  
FOR Sri RAVINDRANATH P.V., HCGP FOR R1 & R2  
M/S A K VASANTH & M K GIRISH FOR R3)

THESE WRIT PETITIONS FILED U/A 226 & 227 OF  
CONSTITUTION OF INDIA PRAYING TO QUASH THE  
NOTIFICATION DATED 11.4.2011 MARKED AT ANNEXURE-E  
AS THE SAME IS OPPOSED TO SECTION 82 TO 85 OF THE  
KARNATAKA MUNICIPAL COUNCILS ACT, 1976 AND  
VIOLATIVE OF ARTICLE 14, 16 AND 21 OF THE  
CONSTITUTION OF INDIA.

THESE PETITIONS HAVING BEEN HEARD AND  
RESERVED FOR ORDERS, THIS DAY, H.N.NAGAMOHAN  
DAS. J, PRONOUNCED THE FOLLOWING;

**ORDER**

In these writ petitions the petitioners have prayed to  
declare the “Karnataka Municipal Corporation (Common

Recruitment of Officers and Employees) Rules, 2011” (for short “Rules 2011”) as unconstitutional and for other reliefs.

2. Prior to 1976 different legislations were in force in different parts of the State of Karnataka governing the municipal administration. In order to bring all the municipal establishments under a single enactment the Government of Karnataka enacted “Karnataka Municipal Corporation Act 1976” (for short “KMC Act”). Consequently the Karnataka Municipal Corporation Rules, 1977 came into force (for short “Rules 1977”). Rule 10 to 26 of Chapter VI of Rules 1977 deals with procedure for appointment, reservation of posts, misconduct etc. With the increase in population, the area of urban local bodies also increased. This development necessitated efficient management of manpower in the urban local bodies. Under the existing rules, promotional

opportunities to certain category of employees was stagnant. In order to remove certain anomalies in the existing rules, for better promotional opportunities and efficient management of manpower, the Government of Karnataka by exercising power under Section 421 of the KMC Act, 1976 repealed Rules 10 to 26 of Rules 1977 and enacted the impugned Rules 2011.

3. Petitioners in W.P.No.18046-52/2011 and W.P.No.18476-482/2011 are the employees and their associations working in Mysore City Corporation. Petitioners in W.P.No.19962-65/2011 are the employees working in Mangalore City Corporation. Petitioners being aggrieved by the impugned Rules 2011 are before this Court.

4. Sri Padmanabha Mahale, learned Senior Counsel, Sri B.B.Bajentri and Sri Narayana Bhat, learned Advocates

advanced arguments on behalf of the petitioners. It is contended that the object of Article 243W of the Constitution is to strengthen the grass root level urban democratic institutions. The impugned Rules are contrary to the object of the Constitution. Further the impugned Rules are contrary to Act 1976. The exclusion of similarly situated Bruhat Bengaluru Mahanagara Palike (for short 'BBMP') from the operation of the impugned Rules is discriminatory, arbitrary and unconstitutional. The impugned Rules takes away the autonomy of the urban local bodies which they were enjoying under the previous Rules 1977. It is contended that the impugned Rules alter the service conditions of the existing employees and there would be curtailment of chances of promotion. Reliance is placed on the following decisions:

- i) 2006 AIR SCW 743  
Shanti G.Patel vs. State of Maharashtra
- ii) AIR 1988 SC 876  
General Officer, Commanding-in-Chief vs.  
Subhash Chandra
- iii) Punjab Water Supply & Sewarage Board  
vs.Ranjodh Singh and ors.  
Civil Appeal Nos.5632 with 5633/2006

5. Per contra, Sri Vijay Shankar, learned Advocate General contends that the impugned Rules do not take away the powers enjoyed by the local bodies in the matter of planning and development of local area. The impugned Rules removes the anomalies in the existing Rules and provides for better management of manpower, efficient service in the local bodies and provides better promotional opportunities to its employees. Reliance is placed on the following decisions:

- i) AIR 1996 SC 1627  
State of A.P. vs. Mc.Dowell & Co.
- ii) (2003) 2 SCC 632  
PU Joshi & others vs. Accountant General
- iii) (2008) 2 SCC (L&S) 851  
Union of India vs. Pushpa Rani
- iv) AIR 1975 SC 1146  
B.Banerjee vs. Smt.Anita Pan
- v) (1998) 1 SCC 285  
Kasambhai F.Ghanchi vs. Chandubhai D.Rajput
- vi) (2009) 1 SCC (L&S) 938  
Dilip Kumar Garg vs. State of UP

6. Heard arguments on both the side and perused the entire writ papers.

7. The Supreme Court in State of AP vs. McDowell & Co. AIR 1996 SC 1627 held that “*a law made by the Parliament or the Legislature can be struck down by Courts on two ground and two grounds alone, viz., (1) lack of*

*legislative competence and (2) violation of any of the fundamental rights guaranteed in Part – II of the Constitution or of any other constitutional provision. There is no third ground.*

8. Keeping in view this dictum of the Apex Court as stated above, it is necessary to examine the fact situation in the present case. Section 91 of the KMC Act, 1976 empowers the Government to make Rules regarding the conditions of service like the tenure of office, salaries and allowances, provident fund, pension, gratuity, leave of absence and other conditions of service of officers and other employees, the procedure to be followed in imposing the penalty, suspension and any other matter incidental to or necessary for the purpose of regulating the appointment of conditions of service of persons appointed. Section 91A empowers the

State government to transfer the employees of corporation to corresponding post in any other Corporation or in any local authority constituted under any law made by the State legislature or the government. Section 421 empowers the Government generally to make rules, regulations and by-laws to carryout the purpose of KMC Act, 1976. The impugned Rules 2011 are made by the Government by exercising power under Section 421. Therefore, the Government of Karnataka is having legislative competency to enact the impugned Rules 2011. On the competency of the Government, there is no much argument by learned Advocates on the side of petitioners. Therefore, I hold that the Government by exercising power under the provisions of KMC Act, 1976 legislated the impugned Rules 2011 and the same is within their legislative competency.

9. Learned counsel for the petitioners by relying on Article 243W of the Constitution contend that the impugned Rules 2011 are contrary to the object of the Constitution. Article 243W empowers the State Governments to make law by endowing the urban local bodies to function as institutions of self Government. The State Government to legislate containing provisions of devolution of powers and responsibilities subject to the conditions specified in the twelfth schedule. The twelfth schedule provides for urban planning including town planning, regulation of land use and construction of buildings. On the other hand, the impugned Rules 2011 relates to recruitment, promotion, change of cadre, increment, abolition of posts etc. The impugned Rules 2011 are in no way contrary to the object specified in Article 243W.

10. The impugned Rules are not made applicable to the BBMP. The contention of petitioners that the exclusion of similarly situated urban local body BBMP from the application of the impugned Rules 2011 is discriminatory and arbitrary under Article 14(g) of the Constitution. I decline to accept this contention of learned counsel for the petitioners. The Supreme Court in Sakhawant Ali vs. State of Orissa AIR 1955 SC 166 held that “*Legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner*”

*discriminatory and violative of the fundamental right guaranteed by Art.14”*

Further in Pannalal Bansilal Patil vs. State of A.P. it is held as under:

*“12..... A uniform law, though is highly desirable, enactment thereof in one go perhaps may be counter productive to unity and integrity of the nation. In a democracy governed by Rule of law, gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. It would therefore, be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief or defect which is most acute can be remedied by process of law at stages”.*

11. Thus it is well settled that Article 14 does not forbid reasonable clarification for the purpose of legislation. It is brought out that the number of employees in BBMP

exceeds the number of employees employed in all other urban local bodies in the State of Karnataka. The nature of management of manpower, the promotional opportunities etc are entirely different in BBMP when compared to other urban local bodies in the State. The Government in its wisdom excluded the BBMP from the application of impugned Rules 2011. This classification of BBMP from other local bodies can neither be said discriminatory, arbitrary or opposed to Article 14(g) of the Constitution.

12. It is contended that under the impugned Rules 2011 a provision is made for classification of posts etc and the same has resulted in hardship and inconvenience to the petitioners. I decline to accept this contention of learned counsel for the petitioners. Under Rule 11 of the impugned Rules, 2011 an option is given to an employee for change of

cadre subject to certain conditions, Rule 16 specifies that no posts shall be abolished unless such posts become vacant and Rule 17 specifies that any right, privilege, obligation or liability acquired, accrued or incurred will not be affected. Thus the interest of the petitioners is protected and in no way the impugned Rules, 2011 will affect the right of petitioners and other employees.

13. The Supreme Court in P.U.Joshi vs. Accountant General (2003)2 SCC 632 held as under:

*10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of*

*course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he*

entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

14. As already stated the rights and benefits already earned by the petitioners are protected under the impugned Rules 2011. In the earlier Rules the Commissioner of a Municipality/Corporation had the power to recruit Group C and D employees and in the impugned Rules, 2011 it is restricted only to group D employees. Again this change will not affect the interest of petitioners and they cannot insist the Government to continue the same situation forever. It is for the Government and it is within their power to bring changes in the existing service rules. I find no illegality for interference with the impugned Rules, 2011.

For the reasons stated above these writ petitions are hereby dismissed. The interim order granted in these writ petitions is hereby vacated. Ordered accordingly.

Sd/-  
JUDGE.

DKB.