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P. SIDDALINGAPPA

v.

THE STATE OF KARNATAKA AND ORS.

SEPTEMBER 20, 1996

B

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Service Law :

Karnataka Municipal Corporation Act, 1976/Karnataka Municipal Corporation Rules, 1977 :

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Sections 82, 84/Rule 26—Bangalore City Corporation—Promotion—Revenue Officers to Deputy Commissioners—Appointment order—Held : Promoted Deputy Commissioners—Power to appoint vests with the Commissioner and not with the Government.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12872 of 1996.

From the Judgment and Order dated 23.1.96 of the Karnataka High Court in W.A. No. 1265 of 1993.

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Rama Joise and S.N. Bhat for the Appellant.

Vijaya Shankar, K.R. Nagraja and Kishan Tyagi for the Respondents.

The following Order of the Court was delivered :

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Leave granted.

We have heard learned counsel on both sides. The admitted position is that the Karnataka Municipal Corporation Rules were framed under the Karnataka Municipal Corporation Act, 1976. The appointing authority in respect of various posts governed under the provisions of the Act is regulated by Sections 82 and 84 of the Act. Section 82 reads as under :

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"82. *Appointment of Engineer, Health Officer etc.* — (1) The Government shall appoint for every corporation such officers of the State Civil Services as it considers suitable to be the engineer, health officer, revenue officer, chief accounts officers and council

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secretary for the efficient functioning of the corporation and such officers shall be subordinate to the Commissioner. The Government may also appoint one or more Deputy Commissioners and Assistant Commissioners who shall exercise such powers and discharge such functions as may be specified in the rules. They shall be subordinate to the Commissioner. A

(2) The Government shall, in consultation with the Mayor, appoint an officer not below the rank of an Assistant Commissioner to be the council secretary. The officer appointed shall be on deputation ordinarily for a period of three years and if the corporation by two thirds majority of its members so desire he shall be withdrawn earlier and another person appointed. It shall be the duty of the council secretary to attend every meeting of the corporation and the standing committees and he shall perform such other duties as are imposed on him by or under this Act. B

(3) The officers appointed under sub-section (1) shall be whole-time officers of the corporation and shall not undertake any work unconnected with their offices. C

(4) Every officer of the Government appointed under sub-sections (1) and (2) shall be paid by the corporation such salary as may be determined by the Government from time to time which shall be met out of the corporation fund and shall be entitled to leave and other privileges in accordance with the rules and regulations applicable to the Government service to which he belongs and in force for the time being, and the corporation shall make such contribution towards his leave allowance, pension and provident fund as may be payable under such rules and regulations by him or on his behalf." D

Section 84 reads as under :

"84. Appointment to the other posts on the corporation establishment.— (1) Subject to the provision of Section 85 and 86 appointment to posts on the corporation establishment other than those borne on the cadres of the Karnataka Municipal Administrative Service and the posts, referred to in Section 82 shall be made by the Commissioner in accordance with this act, the rules and the E

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A regulations framed thereunder."

Rule 26 of the Karnataka Municipal Corporation Rule, 1977 (for short, the 'Rule') envisages mode of appointment and the source of appointment as under :

B	"Sl. No.	Posts	Method of appointment of Officer	No. of Posts
	1.		
C	2.	Deputy Commissioner	By deputation of an Officer from the I.A.S. Cadre By deputation of an Officer (Senior scale) from the K.A.S. Cadre in the Cadre of K.A.S. (Senior scale) By promotion from the Cadre of revenue Officers of Bangalore City Corporation.	1
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A reading of Section 82(1) and (4) conjointly would indicate that the Government is empowered to appoint to the every Corporation such officers of the State Civil Services as it considers suitable to be the Engineer, Health Officer, Revenue Officer, Chief Accounts Officer and Council Secretary. The Government may also appoint one or more Deputy Commissioners and Assistant Commissioners who shall exercise such powers and discharge such functions as may be specified in the Rules. Sub-section (4) postulates that every officer of the Government appointed under sub-section (1) and (2) shall be paid by the Corporation such salary as may be determined by the Government from time to time which shall be met out of the Corporation fund and shall be entitled to all the service benefits enumerated therein. Section 84, as stated earlier, is subject to Sections 85 and 86 and it also says that appointment to posts other than those borne on the cadres of the Karnataka Municipal Administrative Service and the posts referred to in Section 82 shall be made by the Commissioner in accordance with the Act, the rules and the regulations framed thereunder. It would thus be seen that such of the officers of the State Government which are appointed by the State would function under the control of the Commissioner. In addition, the Commissioner also has power under Section 82 to appoint Deputy Commissioner or assistant

Commissioners by promotion in accordance with the procedure of the Act, the rules and regulations framed thereunder. Clause (2) in the Schedule of Rule 26 envisaged that Deputy Commissioners are appointed by the Government by deputation of an officer from the IAS cadre and also by deputation of an officer (senior scale) from K.A.S. cadre in the cadre of K.A.S. (senior scale); Deputy Commissioners by promotion from the cadre of Revenue Officers of Bangalore City Corporation. In other words, under sub-section (1) of Section 82, the Government may also appoint one or more Deputy Commissioners who are the IAS officers or senior scale officers, Karnataka Administrative Service cadre officers. But, as regards the Deputy Commissioners promoted from the cadre of the Revenue officers of the Bangalore City Corporation, by operation of sub-section (1) of Section 84, it is the Commissioner who is empowered to make appointment to such posts according to the Act, rules and regulations framed thereunder. Resultantly, promoted Deputy Commissioners from the Revenue Officers of the Bangalore City Corporation are required to be appointed by the Commissioner and Government have no power to make appointments of them.

The appeal is accordingly allowed. The judgment and order of the Division Bench made in Writ Appeal No. 1265 of 1993 dated January 23, 1996 stands set aside and that of learned single Judge stands confirmed but in the circumstances without costs.

G.N.

Appeal allowed.