

(2003) 08 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No. 323 of 2003 and Batch

B. Rehelamma and Others

APPELLANT

Vs

A.P. State Agro Industries Development Corporation Limited
and Others

RESPONDENT

Date of Decision : 08-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 4 ALD 181 : (2004) 1 ALT 546

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : M. Vijayakumar, Duba V. Nagarjuna Babu and M.C. Adimurthy, for the Appellant; Government Pleader and Mehar Chand Noori, Counsel, for the Respondent

Judgement

N.V. Ramana, J.—The petitioners who are employed with the A.P. State Agro Industries Development Corporation Limited (for short "the Corporation") in different layers of the hierarchy, like Junior Manager, Senior Assistant, Senior Accountant/Senior Sales Executive, Auxiliary Assistant, Mechanic Grade-III, Record Assistant, Attender, Security Guard and Sweepers/Scavengers, have filed these writ petitions calling in question the proceedings dated 28-12-2002 issued by the Vice-Chairman and Managing Director of the Corporation calling upon them to unconditionally opt for the Voluntary Retirement Scheme offered by the Corporation, on grounds more than one.

2. To wit, the facts which culminated in the issuance of the impugned proceedings may briefly be referred to. The Corporation, which is a company registered under the provisions of the Companies Act, 1956 was incorporated to undertake the activities of sales of Fertilizers and Pesticides, formulation of Pesticides, Fruit Processing and Land Development. The affairs of the Corporation are managed by its Board of Directors. In pursuance of Cabinet Resolution No. 164/97, dated 7-4-1997, the Government of Andhra Pradesh in G.O. Ms. No.

282, Agriculture and Co-operation (FPI) Dept., dated 8-7-1997, appointed an Expert Committee under the Chairmanship of Sri K. Subrahmanyam, to examine the working of Public Sector Undertakings and rationalize the staff structure so as to make them more viable and meet the challenges of globalization.

3. On the basis of the recommendations made by the Expert Committee and Cabinet Sub-Committee, the Government while ordering closure of Agro Chemical activity to take steps for retrenchment of 55 officers and 200 common cadre employees and N.M.Rs., who have been exclusively recruited for Agro. Chemical Division, directed the surplus employees to be retrenched by following the procedure laid down therefore. The guidelines issued by the Corporation in Circular dated 11-7-1997 for offering VRS to its employees was upheld by a Division Bench of this Court in W.A. Nos. 703 and 801 of 1999 vide orders dated 18-6-1999.

4. The Government, thereafter, vide G.O. Ms. No. 16 Public Enterprises (PR.III) Department, dated 22-3-2001, issued revised guidelines for implementation of VRS. and as per Clause 4 of the said G.O., an employee who has been identified by the management to be brought under the VRS can opt for VRS, and if any such identified employee do not opt for VRS, he/she would be retrenched under the Staff Regulations/ I.D. Act. As per Clause 8 of the said G.O., the Corporation is first required to identify the surplus posts and staff category/wise various Departments of the organization. A review, meeting was held with the Branch Officer on 13-5-2002 and 14-5-2002, and basing on the work potential the manpower requirement was assessed at 313, rendering the balance posts surplus. The Board of Directors in their meeting held on 27-6-2002 resolved to reduce the staff strength from 405 to 313 and offer VRS to the surplus employees, which the Government approved. As the required number of employees did not opt for VRS in the fourth phase, the Corporation decided to issue the impugned proceedings offering VRS to the remaining 35 surplus employees. In pursuance thereof, only eight employees opted for the VRS, and those who did not opt for the VRS, have filed the present writ petitions.

5. Sri Duba V. Nagarjuna Babu, the learned Counsel appearing on behalf of the petitioners in great majority of the writ petitions contended that the action of the Corporation in issuing the impugned proceedings calling upon the petitioners to unconditionally opt for VRS is illegal and arbitrary. The learned Counsel submits that as long as an organization exists, there will be every requirement of the services of Sweepers/Scavengers/Security Guards for they are employees who keep the precincts of the organization clean and green, and taken care of the security needs, and therefore, the Corporation could not have abolished the posts in toto. When there is dire requirement of the services of Sweepers/Scavengers/Security Guards, abolition of such posts by the Corporation, with a view to deny employment to such class of employees amounts to exploitation of labour and in support of this submission he placed reliance on the judgment of the Apex Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National

Union Water Front Workers and Others etc. etc., . According to him the management of the Corporation while offering VRS to the employees is adopting the method of pick and choose, in that they are retaining the employees of their choice, and are offering VRS to the employees who are of not to their liking, and contended that the impugned action of the Corporation is fraught with malice in law, and in support of this argument, he placed reliance on the decision of the Apex Court in State of Andhra Pradesh and Others Vs. Goverdhanlal Pitti, . According to him, the poor financial condition of the Corporation is the outcome of mismanagement of the affairs of the Corporation by its Board of Directors, and therefore, the petitioners could not have been asked to unconditionally opt for VRS. According to him, asking the petitioners to unconditionally opt for VRS and excluding the class of employees mentioned in Clause 5 of G.O. Ms. No. 16, dated 22-3-2001, namely those due to retire on attaining the age of superannuation within one year, deputationists, temporary casual employees and employees on consolidated wages and employees on contract basis, from being offered most of the employees amongst the who have been issued the impugned proceedings calling upon them to unconditionally opt for VRS belong to Scheduled Castes and Scheduled Tribes, the learned Counsel contends that the Corporation should have either created supernumerary posts or should have applied the reservation roster backwards while offering VRS to such category of employees. He further contended that continuing the N.M.Rs. in service and asking the regular employees to opt for VRS is bad. Inasmuch as some of the petitioners working on the administrative side are willing to work in the lower posts, they should be permitted to do so by applying the principle of "stepping down."

6. Sri M.C. Adimurthy, the learned Counsel adopted the aforementioned arguments insofar as they are consistent with the pleadings of his client in W.P. No. 812 of 2003. Sri M. Vijay Kumar, the learned Counsel appearing for the petitioner in W.P. No. 323 of 2003 while adopting the arguments advance in the majority of the writ petitions contended that before identifying the petitioner as surplus, the Corporation ought to have maintained separate seniority list of those appointed on regular basis and those appointed on compassionate grounds in the cadre of Auxiliary Assistants. Inasmuch as the petitioner has not put in ten years of service, the petitioner will not be entitled to pensionary benefits as per the scheme of VRS. and this fact should be taken note of by this Court.

7. Sri K. Prakash Reddy, the learned Additional Advocate-General appearing on behalf of the Corporation would contend that none of the petitioners have been retrenched so far. They have only been issued notices asking them to unconditionally opt for VRS and that in the event of their non-option, steps for their retrenchment would be taken as per the service regulations/ I.D. Act. As the Corporation is over staffed and its financial position unsound, the Government ordered closure of the Agro Chemical activity, and as a result thereof, all the posts in the said Department were abolished, and inasmuch as the right to hold a post comes to an end on its abolition, the petitioners who

have been asked to opt for VRS cannot have any grievance. According to him, creation, retention and abolition of a post or encadrement and decadrement of a post is a matter of policy exclusively falling within the province of the executive, and this Court in exercise of its power under Article 226 of the Constitution of India, would not interfere with such policy decisions unless it is demonstrated that policy so framed is fraught with illegality and mala fides. It is not open for the petitioners to contend that a particular post should not be abolished and retained, and that while identifying surplus employees in relation to SC and ST employees, the roster should be applied backwards. The management of the Corporation has not adopted the pick and choose method in identifying surplus employees, but has applied the principle of "last come first go" principle in each category, and therefore, no malice can be attributed to the management of the Corporation. Inasmuch as retirement of employees whose left over service is one year is imminent and would take place in the near future, excluding them from the applicability of VRS by reason of Clause 5 of G.O. Ms. No. 16, dated 22-3-2001, cannot be found fault with. Likewise, excluding the temporary or casual employees and employees on consolidated wages or on contract basis, from the purview of VRS also cannot be found fault with because they can be retrenched from service at any point of time. Therefore, no illegality can be attributed to Clause 5 of the G.O. The contention of the petitioners that some N.M.Rs. and persons who are junior to them are being continued is baseless and incorrect. Inasmuch as the post of Auxiliary Assistant is a class in itself, no separate seniority list of those appointed on regular basis and those appointed on compassionate grounds is required to be maintained. The contention of some of the petitioners that they are willing to work in lower posts and the principle of "stepping down" should be applied in identifying surplus staff, is misplaced and cannot be accepted.

8. The prime question that arises for consideration in this batch of writ petitions is whether the petitioners are entitled to continue in service despite the fact that the posts in which they were working stood abolished by reason of a policy decision taken by the Corporation to make it more viable in the wake of its weak financial position?

9. As can be seen from the averments made in the affidavit filed in support of the vacate stay petition, before introducing the fourth phase of VRS and identifying the petitioners as surplus, VRS was offered to the employees of the Corporation on three occasions, and the VRS scheme also stood upheld by the judgment of the Division Bench of this Court in W.A. Nos. 703 and 801 of 1999 dated 8-6-1999. It may be noticed that the introduction of the fourth phase of VRS is pursuant to a policy decision taken by the Board of Directors of the Corporation in their meeting held on 28-6-2002, to reduce the cadre strength of the Corporation from 405 to 313, which was even approved by the Government vide their letter dated 23-11-2002. The reduction in the cadre strength of the Corporation, as can be seen from the affidavit filed in support of the vacate stay petition, was necessitated because of its weak financial position and oversized

staff strength. By reason of this policy decision, all the posts in which the petitioners were working stood abolished, and as a corollary, the petitioners who have been holding the said posts are sought to be offered VRS instead of retrenching them in accordance with the Service Regulations/I.D. Act. Though the fourth phase of VRS was offered to all the employees of the Corporation but the response was not to the satisfaction of the Corporation, and therefore, the Corporation resorted to the identification of surplus staff in each cadre. It should be noticed that the services of the petitioner are not being terminated as a disciplinary measure, or for any mala fide or extraneous reasons, but as the posts in which they are working stood abolished, the Corporation has decided to offer VRS to the identified surplus employees. It is long well settled that abolition of a post is not personal injury to the employee, and the loss of employment arising out of such abolition of posts, does not amount to termination or dismissal from service, and therefore, the petitioners cannot have any grievance, and in this context, it would be useful to refer to the observations made by the Five Judge Bench of the Apex Court in *M. Ramanatha Pillai Vs. The State of Kerala and Another*, .

The abolition of post may have the consequence of termination of service, but such termination is not dismissal or removal within the meaning of Article 311 because both in case of dismissal and removal there is a stigma. The abolition of post is not a personal penalty against the Government servant. Therefore, the opportunity of showing cause against the proposed penalty of dismissal or removal does not arise in the case of abolition of post. Nor does it confer on the person any right hold the post after it is abolished or to any other employment.

10. It is equally well settled law that creation or retention or abolition of posts in a particular cadre or category in an organization or encadrement or decadrement, depends upon various factors, namely the nature of work to be executed, whether the work to be executed is of temporary or permanent nature, whether it requires technical or non-technical manpower, financial viability, budgetary estimates etc., and is in essence a policy matter, falling exclusively within the province of the executive authorities, and this Court in exercise of its power of judicial review under Article 226 of the Constitution of India, does not embark upon to scrutinize such policy matters unless it is demonstrated that the policy decision so taken or framed by the executive authorities is fraught with illegality and unconstitutionality. The Five Judge Bench of the Apex Court in *N. Ramanatha v. State of Kerala* (supra) while considering the power and authority of the Government to abolish a post in the service held thus:

The power to create or abolish a post is not related to the doctrine of pleasure. It is a matter of governmental policy. Every sovereign Government has this power in the interest and necessity of internal administration. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of post are all decided by the Government in the interest of administration and general

public.

11. A reference in this context, may also be made to the observations of the Apex Court in *K. Rajendran and Others Vs. State of Tamil Nadu and Others*, , which read:

Whether a post should be retained or abolished is essentially a matter for the Government to decide. As long as such decision of the Government is taken in good faith, the same cannot be set aside by the Court. It is not open to the Court to go behind the wisdom of the decision and substitute its own opinion for that of the Government on the point as to whether a post should or should not be abolished. The decision to abolish the post should, however, as already mentioned, be taken in good faith and be not used as a cloak pretence to terminate the services of a person holding that post.

12. From the law laid down by the Apex Court in the aforementioned cases it becomes clear that every sovereign Government has the power to create or abolish a post having regard to its exigencies and administrative necessities, and that as long as the decision, taken by the Government in that regard is in good faith, this Court should not interfere with such decision of the Government. In the instant case the decision to reduce the cadre strength was taken because of the poor financial position of the Corporation and to make it more viable. When the sustenance of the Corporation is at risk because of its poor financial position and unviability of the organization, no exception can be taken to the policy decision taken by the Government to reduce the cadre strength. It should be noted that the right to hold a post come to an end on its abolition, and inasmuch as the petitioners are asked to opt for VRS pursuant to the abolition of the posts, which they were holding, they cannot claim to have any vested right to continue therein.

13. In the above view of the matter, no fault can be found with the action of the Corporation in abolishing the posts of Sweepers/Scavengers/Security Guards in their entirety. Likewise, no fault can be found with the action of the Corporation in abolishing the post of Junior Managers and other posts. As a consequence, the petitioners who have been holding the said posts cannot claim to have any vested right to continue therein. When the existing posts themselves have been abolished, the question of directing the Corporation to create supernumerary posts for absorbing the Scheduled Caste and Scheduled Tribe employees or applying the reservation roster backwards, does not and cannot arise. Inasmuch as the posts held by the petitioners were abolished by reason of a policy decision, it cannot be said that the Corporation has taken such a decision only to deny employment to the petitioners and to exploit them. The decision to abolish the posts was taken in the larger interest of the Corporation, namely, its sustenance having regard to its unsound financial condition. Therefore, reliance placed by the learned Counsel for the petitioner on the Apex Court in *Steel Authority of India Limited v. National Union Waterfront Workers* (supra) is misplaced and is of no help to the petitioners.

14. The question whether or not the poor financial health of the Corporation is the outcome of mismanagement of the affairs of the Corporation by its Board of Directors is a matter to be considered by the Government of any of the agencies authorized by it. But this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot go into such question. Be that as it may, except making bald statements that the poor financial position is the result of mismanagement of the affairs of the Corporation by its Board of Directors, no material has been placed before this Court to show that the Corporation was mismanaged by its Board of Directors.

15. The contention of the petitioners that the action of the Corporation in asking them to opt for VRS and excluding certain class of employees mentioned in Clause 5 of G.O. Ms. No. 16, dated 22-3-2001 namely those due to retire on attaining the age of superannuation within one year deputationists, temporary casual employees and employees on consolidated wages and employees on contract basis, from the purview of VRS is discriminatory, and therefore, illegal, cannot be accepted for the reason that it is but quite natural that a person on attaining the age of superannuation would automatically retire from service. Inasmuch as an employee left one or less than one year of service would retire shortly, his retirement being imminent and in due course of time on exception can be taken to such class of employees being excluded from the purview of VRS. It should be noted that normally VRS is offered to persons who have put in several years of service and still have several years of service to put in. The employees who accept VRS, it goes without saying are offered benefits, whereunder the employee would be compensated for the left over service and for severing his ties with his employer once and for all. It should be noted that temporary casual employees and employees on consolidated wages and employees on contract basis hold no post in the Corporation and therefore, excluding them from the purview of VRS, which confers some monetary benefits on regular employees on their accepting the offer of VRS. cannot be found fault with. In that view of the matter, Clause 5 of G.O. Ms. No 16, dated 22-3-2001, can neither be said to be discriminatory nor illegal.

16. The contention of the petitioner in W.P. No. 323 of 2003 that the Corporation ought to have maintained separate seniority lists of those appointed on regular basis and those appointed on compassionate grounds in the cadre of Auxiliary Assistants, is devoid of any merit. It should be noted that Auxiliary Assistants are a class in themselves, and all the posts of Auxiliary Assistants are equal and carry equal pay scale. When there is no difference either in the posts of Auxiliary Assistants or the pay scale attached to it, no exception can be taken to the action of the Corporation in maintaining one seniority list, and more particularly when there is no service rule which provides for maintaining separate seniority lists of those appointed by way of recruitment, promotion or on compassionate grounds.

17. Insofar as the contention of the petitioner in W.P. No. 323 of 2003 that inasmuch as she has not put in ten years of service she would not be entitled to

pensionary benefits, is concerned, it should be noted that she was given employment on compassionate grounds. The petitioner apart from receiving salary for the work done by her, is also drawing pension of her husband. This apart, it is stated by the Corporation, on accepting the offer of VRS she would be entitled to all the benefits flowing from VRS, namely ESI scheme, provident fund, ex gratia, gratuity, leave salary, EPF accumulations. It is not as if the petitioner is not receiving any pension of her husband. Had the petitioner not received any pension of her husband and other monetary benefits flowing from VRS, she would have been justified in asking the Corporation to provide pension but that is not the case on hand. In that view of the matter, the petitioner cannot have any grievance against the action of the Corporation in offering VRS to her upon she being identified as surplus.

18. The contention of the petitioners, who are working as Senior Accountants, Senior Assistant and Junior Manager, that in identifying the surplus employees, the Corporation has adopted the method of pick and choose, and that while identifying the surplus employees, it should have allowed them to roll down or relapse in the feeder post, is misplaced and cannot be accepted. It is the specific case of the Corporation that it has identified the surplus employees by applying the principle of "last come first go" in each category, by reason of which the petitioners, who ranked last in the category, were identified as surplus. It is the further case of the Corporation that the petitioners having worked in the promoted posts and having derived the benefits flowing therefrom, cannot at the time when it comes to opting VRS, cannot be permitted to roll down or fall back in the post from which they were promoted. It may be noticed that this Court considered these aspects of the matter in the case of A.P. State Irrigation Development Corporation in its judgment in W.P. No. 17944 of 2002 and batch, and by judgment dated 25-6-2003, S. Rami Reddy Vs. Vice-Chairman and Managing Director, Andhra Pradesh State Irrigation Development Corporation Limited and Others, , negatived these contentions of the petitioners. In that view of the matter, the contentions fail, and they are accordingly rejected.

19. Inasmuch as identification of the petitioners as surplus by the application of "last come first go" principle was necessitated pursuant to the abolition of certain posts by reason of a policy decision which, policy decision already stood upheld by this Court, no exception can be taken to the action of the Corporation in identifying the petitioners as surplus and issuing the impugned proceedings calling upon them to unconditionally opt for VRS and no malice or ill-will can be attributed to the management of the Corporation, and more so when such action has been taken in the interest of the Corporation itself. In that view of the matter, reliance placed by the learned Counsel for the petitioners on the decision of the Apex Court in State of A.P. v. Goverdhanlal Pitti (supra) is of no avail to him.

20. Insofar as the question relating to application of the roster backwards in relation to the employees belonging to Scheduled Castes and Scheduled Tribes in

the identification of surplus employees is concerned, the same was considered by this Court in W.P. No. 17944 of 2002 and Batch, dated 25-6-2003. This Court having considered the said question in the light of the various constitutional provisions providing for reservation and safeguarding the interests of the Scheduled Castes and Scheduled Tribes and following the judgment of the Apex Court in Government of A.P. and Others Vs. Bala Musalaiah and Others, , came to the conclusion that the Corporation should re-examine the matter and consider the feasibility of applying the reservation roster backwards in respect of employees belonging to Scheduled Castes and Scheduled Tribes in identification of surplus employee to whom VRS is to be offered where the posts have completely not been abolished, for by application of the roster backwards, the policy and rationale behind extending reservation to the backward sections of the society, would be adequately met and would receive the constitutional approval of providing adequate representation to the Scheduled Castes and Tribes in the service of the Corporation.

21. In the instant case, it was brought to the notice of the Court by the learned Additional Advocate-General that the posts of Auxiliary Assistant have not been completely abolished. If that be so, and having regard to the view taken by me in W.P. No. 17944 of 2002 and Batch dated 25-6-2003, there should be a direction to the Corporation to re-examine the matter and consider the feasibility of applying the roster backwards in respect of the employees belonging to Scheduled Castes and Scheduled Tribes, who are working as Auxiliary Assistants, namely sole-petitioner in W.P. No. 323 of 2003 and petitioner Nos. 4 and 5 in W.P. No. 352 of 2003, in identifying the surplus employees for offering VRS.

22. In the result, and for the foregoing reasons, W.P. Nos. 351, 447, 729, 781, 812, 870, 877, 878 and 897 of 2003 shall stand dismissed. Insofar as W.P. Nos. 323 and 352 of 2003, are concerned, save Petitioner Nos. 1 to 3 in W.P. 352 of 2003 against whom the writ petition is dismissed, they shall stand disposed of in terms of the directions given by this Court in the penultimate para of this judgment. No costs.