THE HON'BLE SRI JUSTICE DILIP B.BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT APPEAL No.1239 of 2006

JUDGMENT: (per the Hon'ble Sri Justice A.Ramalingeswara Rao)

This Writ Appeal is directed against the order in W.P.No.16806 of 1998, dated 31.08.2006.

2. The respondent in the Writ Petition (hereinafter referred to as Corporation) is the appellant herein and the writ petitioner (hereinafter referred to as Association) is the respondent herein. The Writ Petition was filed challenging the action of the Corporation in not implementing G.O.(P).No.204, Finance & Planning (FW:PCI) Department, dated 12.12.1997 by extending the Dearness Allowance arrears from 01.07.1997 to the members of the Association. The members of the Association voluntarily retired from service pursuant to a scheme framed by the Corporation on 11.07.1997. They retired from service with effect from 31.10.1997.

3. The appellant is a State owned Corporation. The orders issued by the Government are not automatically applicable to the Corporation, unless they are adopted by it by passing their resolution. The Government issued G.O.(P).No.269, dated 07.12.1995 enhancing the Dearness Allowance with effect from 01.07.1995. When the same was not implemented, the Association filed W.P.No.7971 of 1996 and this Court passed an interim order in WPMP.No.9787 of 1996 on 18.07.1996 directing the Corporation to pay the Dearness Allowance to its employees in pursuance of G.O.(P).No.269, dated 07.12.1995 with effect from 01.07.1996, pending further orders in the Writ Petition. The said order was confirmed by a Division Bench of this Court in W.A.No.934 of

1996, dated 13.08.1996. The Corporation carried the matter to the Hon'ble Supreme Court and the Hon'ble Supreme Court in Civil Appeal No.15076 of 1996, dated 18.11.1996, directed this Court for disposal of the Writ Petition itself instead of directing the Corporation to pay the amount by way of interim order and accordingly set aside the interim order of the learned Single Judge. Thereafter, the Association withdrew the Writ Petition on 12.09.1997, in view of the compromise that took place outside the Court. The Board of Directors of the Corporation passed Resolution No.3025 resolving to sanction four instalments of Dearness Allowance with arrears with effect from 01.01.1997 to its employees on par with Government employees consequent to withdrawal of W.P.No.7971 of 1996. At this stage, it is relevant to state that the employees of the Association were willing to forego the arrears from 01.07.1995 to 31.12.1996 and accepted the payment of arrears with effect from 01.01.1997. The Dearness Allowance was further revised in G.O.(P).No.204, dated 12.12.1997, making it applicable with effect from 01.07.1997. Writ Petition No.16806 of 1998 was filed seeking implementation of the said Government Order and the learned Single Judge allowed the Writ Petition by directing the Corporation to pay the enhanced Dearness Allowance for the period from 01.07.1997 to 31.10.1997, the date on which the members of the Association took voluntary retirement.

4. The Government issued G.O.Ms.No.57, Finance & Planning FW.PC.I) Department, dated 15.04.1998, modifying the orders issued in G.O.(P).No.204, dated 12.12.1997. There is no resolution passed by the Board of Directors of the Corporation implementing G.O.(P).No.204, dated 12.12.1997. But, however in respect of G.O.(P).No.57, dated 15.04.1998, the Board of Directors of the Corporation passed Resolution No.3081 on 30.04.1998 resolving to release Dearness Allowance to the employees of the Corporation with effect from 01.01.1998 instead of

01.07.1997 in view of the heavy financial burden on the Corporation. The said resolution of the Board of Directors of the Corporation was not challenged by the Association.

5. The learned counsel for the Corporation contends that since the employees of the Corporation are not Government employees, a separate decision has to be taken by the Board of Directors of the Corporation adopting any Government Order passed by the Government, and in the absence of any resolution adopting G.O.(P).No.204, dated 12.12.1997, it is not open for the employees of the Association to claim the benefit under the said Government Order. He also contended that in the absence of any challenge to the Resolution No.3081, dated 30.04.1998 fixing the date of implementation of the payment of Dearness Allowance to the employees of the Corporation with effect from 01.01.1998 instead of 01.07.1997, no relief can be granted to the employees of the Corporation.

6. The learned counsel for the Association, on the other hand, contended that earlier also the employees of the Corporation sought implementation of G.O.(P).No.269, dated 07.12.1995 with effect from 01.07.1995 and the said matter could not be pursued in view of the compromise entered outside the Court. Neither there is need for the Corporation to pass a separate resolution for implementing the Government Orders nor it is necessary for them to challenge the Resolution No.3081 dated 30.04.1998.

7. We have carefully perused the record in this case. As stated above, the Association filed W.P.No.7971 of 1996 seeking implementation of G.O.(P).No.269, dated 07.12.1995 with effect from 01.07.1995 and the said Writ Petition was ultimately withdrawn, as the matter was settled out of Court. However, if we see the Resolution

No.3025 passed by the Board of Directors of the Corporation, the Association agreed to forego the arrears from 01.07.1995 to 31.12.1996 and accepted the payment of arrears with effect from 01.01.1997. The Government issued G.O.(P).No.204, dated 12.12.1997, extending the benefit of enhanced Dearness Allowance from 01.01.1997 and no resolution was passed seeking implementation of the said Government Order by the Board of Directors of the Corporation. The members of the Association retired from service under voluntary retirement scheme with effect from 31.10.1997. Though there is no resolution adopting G.O.(P).No.204, dated 12.12.1997, the Association filed W.P.No.16806 of 1998 and the learned Single Judge allowed the same. He allowed the Writ Petition on the assumption that the sanction of Dearness Allowance to the employees of the Corporation on par with the Government employees is automatic. The learned Single Judge failed to see that the Resolution No.3025 was applicable only in respect of payment of Dearness Allowance pursuant to G.O.(P).No.269, dated 07.12.1995. The attention of the learned Single Judge was not brought to the subsequent resolution No.3081 dated 30.04.1998. G.O.(P).No.57, dated 15.04.1998, was issued in modification of the orders in G.O.(P).No.204, dated 12.12.1997 and Resolution No.3081 was passed by resolving to pay the Dearness Allowance to the employees of the Corporation with effect from 01.01.1998 instead of 01.07.1997. Admittedly, the Association did not challenge the said resolution. It is also the admitted case of both the counsel that the existing employees who have been continuing in the Corporation are receiving the arrears of Dearness Allowance only with effect from 01.01.1998. The members of the Association, though retired, cannot claim the Dearness Allowance from an anterior date when the existing employees drew the same from 01.01.1998.

8. The learned counsel for the Corporation drew our attention to the observation made by the Division Bench of this Court in **Irrigation**

Development Employees Association V. Govt. of A.P.[1], which is as follows:

> "102. Be it as it may, G.O.No.121 dated 31-10-1991, admittedly is applicable to Government Departments only and does not have universal application. The Corporation did not adopt the said G.O. and therefore it has no application to the employees of the Corporation."

9. In the instant case also, there is no resolution of the Board of Directors adopting G.O.(P).No.204, dated 12.12.1997. Since the members of the Association are not Government employees, they cannot claim any benefit under the said Government Order automatically. If the Corporation wants to extend the benefit of any Government Order, it has to pass a separate resolution. Such type of resolution is absent with regard to implementation of G.O.(P).No.204, dated 12.12.1997. The learned counsel for the Association failed to show that any employee, whether retired or serving, got benefit under G.O.(P).No.204, dated 12.12.1997 with effect from 01.07.1997, as claimed by his clients.

10. Thus, viewed from any angle, the impugned order is unsustainable in law and is accordingly set aside. The Writ Appeal is allowed. Miscellaneous petitions pending, if any, stand disposed of. There shall be no order as to costs.

DILIP B.BHOSALE, J

A.RAMALINGESWARA RAO, J

Date: 12.03.2015
TJMR

[1] 2004 (2) ALD 599 (DB)