HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT APPEAL Nos.926, 935, 937 & 975 OF 2013
And
Contempt Case Nos.1979 and 1985 of 2014

COMMON JUDGMENT: (*Per Hon'ble Sri Justice A.Rajasheker Reddy)*

These writ appeals are directed against Common Order dated 19.02.2013 in W.P.Nos.7764, 7765, 19505 & 20387 of 2006 wherein the learned Single Judge has set aside the individual impugned proceedings dated 13.04.2006 issued by the appellant Corporation, terminating the services of the respondents herein, which was issued in pursuant to directions in Common Judgment dated 02.12.2005 in W.P.Nos.30602, 29326, 29327 and 32265 of 1997 reported in **B.Kishan v. Managing Director and Vice-Chairman, A.P.State Agro Industries Development Corporation Ltd.,**[1]. As such, all these writ appeals are being heard together and disposed of by way of this Common Judgment.

2. Counter affidavits are being filed by the 1st respondents in all these writ appeals denying the allegations in the grounds of appeal in all the writ appeals.

3. Heard learned counsel for the parties.

4. Sri G.Vidyasagar, learned Senior Counsel appearing for the appellant Corporation submits that the appellant Corporation has considered the directions issued in **B.Kishan's** case and passed impugned orders in the writ petitions filed by the respondents-employees, in its true spirit and that he made

[1] 2006 (2) ALD 210

several submissions supporting the impugned termination orders passed by the appellant Corporation, which will be referred to later.

5. Sri T.P.Acharya, learned counsel for the respondents-employees submitted arguments reiterating the averments in the counter affidavits stating that the appellant Corporation has not followed the directions issued in **B.Kishan's** case in its true spirit and rejected the case of the respondents-employees and continued similarly situated persons by denying benefits to the respondents-employees, apart from raising other submissions, which will be referred to later.

6. In view of rival contentions raised by both the parties, the point that arises for consideration in all these writ appeals is whether the appellant Corporation has followed the directions in **B.Kishan's** case in its true spirit and passed impugned termination orders?

7. In order to appreciate the issue in proper perspective, it is relevant to extract the observation of the learned Single Judge in **B.Kishan's** case, which reads as follows:

> "63. The Corporation shall consider operating the roster backwards, insofar as the petitioners are concerned, all of whom belong to the Scheduled Castes, and examine the feasibility of accommodating them in equivalent/similar posts in other divisions, including posts filled up subsequent to the closure of the agro chemicals division, with deputationists or otherwise, provided, of course, the Corporation is satisfied, for just and valid reasons, that they possess the requisite qualifications and the experience required to discharge the functions prescribed for the said posts. The Board of Directors, the top decision making-body of the Corporation, shall consider and take an appropriate decision in this regard, in accordance with the aforementioned observations, within a period of four months from the date of receipt of a copy of the order. The decision of the Board of Directors, shall be communicated to the petitioners within two weeks thereafter."

While coming to the conclusion, the learned Single Judge held that it is for the appellant Corporation to recruit personnel for the activity, relating to the setting up of Agro Rythu Seva Kendras, is in the realm of executive policy since creation and abolition of posts is for the Corporation, in its wisdom, to decide and that no mandamus can be issued directing it to create posts or to fill up the said posts appointing the petitioners therein, as contended by Sri G.Vidyasagar, learned Senior Counsel. Learned Single Judge also held that it is not for the Courts to direct, by a mandamus, creation or abolition of posts, since they are matters of executive policy, judicial review is permissible to an examination as to whether these policy decisions are so arbitrary or irrational as to violate Articles 14 and 16 of the Constitution of India. Moreover, there is no positive direction to appoint the respondents-employees without reference to their eligibility and the qualifications possessed by them, on which reliance is placed by learned Senior Counsel. The appellant Corporation, having considered the qualifications and experience of each individuals in respect of the posts in question, passed elaborate individual impugned termination proceedings dated 13.04.2006.

8. The individual termination proceedings dated 13.04.2006, which were impugned in the writ petitions filed by the respondents-employees, are alleged to have been passed by the appellant Corporation in compliance with the directions of this Court in **B.Kishan's** Case. By virtue of the said proceedings, the services of the respondents-employees i.e., K.B.Jagan Mohan,1st

respondent in W.A.No.935 of 2013, P.S.S.Ravi Kumar, 1st respondent in W.A.No.926 of 2013, P.Venkaiah, 1st respondent in W.A.No.975 of 2013 and B.Kishan, 1st respondent in W.A.No.937 of 2013 have been terminated. The Government, in order to improve the performance of the State Level Public Enterprises, minimize public liability and promote public interest, it had constituted one Expert Committee under the Chairmanship of Sri K.Subrahmanyam, I.A.S (Retired) to examine the above issues. As per the recommendations of Subrahmanyam Committee and the Cabinet Sub-Committee, the Government of Andhra Pradesh had issued G.O.ms.No.282, Agriculture and Cooperation Department, dated 08.07.1997 for restructuring the Corporation duly closing down the Agro Chemical Division including two Pesticides Formulation Units at Kurnool and Khammam and Fruit Preservation and processing Unit at Anantarajupet and it was also ordered to retrench 55 officers who were exclusively recruited for Agro Chemical Division as per Service Rules of the Corporation. It is also stated in the said proceedings that the Government introduced Voluntary Retirement Scheme to the said officers in accordance with the policy decision of the Government to adopt humane exit policy. Accordingly, the appellant Corporation issued a Circular on 11.07.1997, inviting applications from the employees exclusively recruited for Agro Chemical Division as well as from other cadre surplus employees in other Divisions. It is noticed in the said proceedings that when there was no response from the surplus employees, the said scheme was extended up to 27.10.1997 as a special case and

they were requested to exercise their options unconditionally and send the same to the Head Office on or before 29.10.1997, failing which they would be terminated/retrenched. Aggrieved by the same, some of the employees approached this Court, by filing Writ Petitions No.30602, 29326, 29327 and 32265 of 1997, wherein this Court, by common judgment dated 02.12.2005, disposed of the same by directing the Board to take a decision, which is referred to above. In pursuance to same, impugned proceedings are issued by the appellant-Corporation. The operative portion of the same reads as follows:

> "9. After obtaining the certified copy of the Common Judgment, the Board of Directors of the Corporation, at its 220th Meeting held on 29-03-2006, considered the above case in accordance with the observations of the Hon'ble High Court in the aforesaid judgment in letter and spirit. The Board has observed that neither there was a feasibility of operating roaster backwards in Agro Chemicals Division in as much as the Agro Chemicals Division was closed down, nor any equal posts with their qualification and experience exist in other Divisions of the Corporation. Therefore, applying roaster backwards is not feasible either in the category of Junior Marketing Officers, Senior Marketing Officers/Regional Managers (Agro Chemicals) or equivalent posts in any other divisions of the Corporation. The Board also tried its level best to accommodate the petitioners in other Divisions of the Corporation, but as they do not have the requisite qualifications and experience prescribed to the equivalent posts in other Divisions, they could not be accommodated.
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> 10. In fact, as per the policy decision of the Government, the Corporation itself downsized the activities as well as the manpower by implementing Voluntary Retirement Scheme to its employees in 4 phases. As on 31-10-1997, the cadre strength in the Corporation was 967, but after implementation of Voluntary Retirement Scheme in 4 phases, the cadre strength was brought down and the present staff strength of the Organization is 289 only. Even many of the higher posts were either abolished or declared as surplus. Thus, since the Corporation itself downsized its manpower, there is no feasibility of accommodating the petitioners either by applying the roaster backwards or by accommodating the petitioners in other Divisions of the Corporation. The Board after detailed discussion and due deliberation on the subject decided accordingly."

In the aforesaid proceedings, the Corporation had compared the case of the respondents-employees with those of Sri C.S.Reddy and P.Sudhakara Reddy. As contended by Sri

G.Vidyasagar, learned Senior Counsel for appellant that C.S.Reddy, who was holding the post of Zonal Manager in M/s.Krishak Bharathi Cooperative Limited, was more qualified and experienced than that of the respondents-employees and concluded that the services of Sri C.S.Reddy are very much needed to the Corporation as Advisor (Marketing). As contended by learned Senior Counsel, it is also found that the services of C.S.Reddy were hired for a period of one year, which is not a permanent post, with the permission of Government of Andhra Pradesh. As regards P.Sudhakar Reddy is concerned, he was working as Senior Scientist in Acharya N.G.Ranga Agriculture University, brought on deputation to the Corporation for a period of one year. Since P.Sudhakar Reddy was having all the requisite qualifications to the post of Manager (Agriculture Engineering), he was brought on deputation to the Corporation for one year and he would be repatriated to his parent organization after completion of said period since he is not a regular employee. In the said proceedings it is stated that the Corporation tried its level best to accommodate the respondents-employees in the Corporation by implementing the judgment of this Court, but it was beyond the scope of the management of the appellant Corporation to accommodate them in as much as the Corporation itself downsized its manpower and abolished many posts as per the policy of the Government and therefore, concluded that there is no feasibility to operate roaster backwards in respect of the respondents-employees or to

accommodate them in equal/similar posts. While rendering aforesaid reasons, the services of the respondents-employees were terminated with immediate effect, with an advice to the employees to submit their claim for terminal benefits in accordance with the Service Rules of the Corporation and also communicated the said orders to the respondents-employees and they received and acknowledged the same. As such, it cannot be said that the appellant Corporation had not complied with the orders of this Court in **B.Kishan's** case in its true spirit as held by the learned Single Judge.

9. Learned Single Judge in common order dated 19.02.2013 has considered qualifications of each employee, who were terminated by impugned proceedings with that of the deputationists, who were brought on deputation by the Corporation for a limited period and for a specific purpose, which is not the purport of **B.Kishan's** case. It is admitted that pursuant to G.O.Ms.No.282, Agriculture & Cooperation (FP.I) Department dated 08.07.1997, the Agro Chemical Division was closed down. It is pertinent to mention that it is not the pleaded by respondents-employees in their affidavits filed in support of the writ petitions what are equivalent posts in which they have to be accommodated and who are being continued in that posts. Respondents-employees pleaded in their affidavits that their services shall be considered and to be retained in Agro Rythu Seva Kendras and Farm Mechanisation schemes undertaken by the appellant

Corporation. As contended by Sri G.Vidyasagar, learned Senior Counsel that the opening of Agro Rythu Seva Kendras is a policy decision of the Government and the Corporation have no Administrative control over the same and only to supply the stocks from various manufacturers to Agro Rythu Seva Kendras and that the Corporation is ready to offer Agro Rythu Seva Kendras to any unemployed qualified rural youth in response of notification. As contended by learned Senior Counsel that by virtue of G.O.Ms.No.113 Agriculture & Cooperation (FP.I) Department dated 18.05.2005 by which the Corporation was appointed as Nodal Agency for implementing the Farm Mechanization Schemes and other schemes of the Government, and it does not amounts to revival of Agro Chemical Division. It is also stated that as a Nodal Agent, in the Farm Mechanisation Schemes, the Corporation is entitled to a small amount as commission on the turnover, which is surviving on the basis of the Commission for clearing the administrative expenses such as rent, salary, wages etc. As such, the respondents- employees, who were terminated by virtue of impugned termination orders, cannot be accommodated in Agro Rythu Seva Kendras by the appellant Corporation, but the respondents-employees can also take benefit under G.O.Ms.No.114, dated 20.05.2005. These aspects were mentioned in counter affidavit filed by the appellant Corporation elaborately.

10. It is pertinent to note that in the affidavit filed in WPMP in WP No.7765 of 2006 by respondent/writ petitioner, it is stated that the appellant Corporation vide proceedings dated 11.04.2006 had accorded permission to hire the services of Agriculture Graduates of Agro Rythu Seva Kendras and in pursuant to the same, six agricultural graduates have been engaged as a coordinators namely 1) Sri K.Gopal Reddy, B.Sc (Ag), 2. Sri Rajeswar Reddy B.Sc(Ag), 3. Sri R.Srinivas B.Sc(Ag), 4. Sri N.Pitchayya B.Sc(Ag), 5. Sri A.Rajeswar B.Sc (Ag) and 6. Sri S.Visweswar Rao, B.Sc (Ag). It is also stated therein that persons namely Sri B.H.Panduranga Reddy, Sri N.S.Ramaraju, Sri Rama Rao, Sri Narendra, Sri K.L.Raju, who retired from service on attaining the age of superannuation have been re-engaged their services by giving different nomenclature of designations. It is averred that the appellant Corporation, on one hand contending that there is no work for the respondent-employees and on the other hand, it had appointed coordinators. It is averred therein that Sri V.U.V.Ramana, Agriculture Officer and K.Krishna have been engaged on deputation basis, which shows that there is work in the appellant Corporation to continue the respondents-employees in the Corporation. It is averred that the A.P. Agro Industries Development Corporation Limited has issued circular dated 15.06.2001 for implementation of voluntary scheme duly enclosing the list of surplus employees and that even after the issuance of such list, the so called listed

surplus employees have been working except the respondents-employees.

11. In response to the above averments in the affidavit in the miscellaneous petition, the appellant Corporation filed counter stating that Sri G.Ram Babu, who is also an employee of Agro Chemicals Division is also similarly situated person and whose services were also sought to be terminated as that of respondents-employees and other agro chemicals division obtained interim orders by filing writ petitions. At the time of obtaining interim order, Sri G.Ram Babu is on deputation and they sought to serve termination notice on the borrowing department through the Collector of the District. But said Ram Babu was continued in view of interim orders and he retired from the services of the Corporation on 30.06.2006 on attaining the age of superannuation. The petitioners in WP Nos.7764 & 7765 of 2006 were continued in service on the strength of interim orders in WP No.29326 of 1997 and that Sri B.V.Krishna Reddy and Sri G.Prasad Rao, who were appointed as Junior Marketing Officers on NMR basis but however, they were being continued on the basis of various writ petitions filed by them, i.e., regularization of services and another for granting time scales and also questioned the orders of withdrawing the regularization order. Questioning the termination order, all of them obtained interim orders in writ petitions filed by them. Subsequently, on vacate petitions being filed by the Corporation, three of the writ petitions with

regard to regularization, cancellation of regularization and grant of time scale were allowed by this Court and the writ petition regarding termination is still pending. Even according to reply affidavit filed by respondent/writ petitioner, Sri Vidyasagar and Panduranga Reddy are Engineers, as such, they cannot compare with them as they do not possess same qualification to hold the posts held by those two persons. Vide G.O Ms.No.114 Agriculture & Cooperation (FP.I) Department dated 20.05.2005, permission was accorded by Government for setting up Agro Seva Kendras retail outlets routing the products through un-employed qualified graduates/experiences entrepreneurs by making the products available to them for supply to the farmers on time ensuring quality and price line. That the Agro Rythu Seva Kendras are not under the administrative control of Corporation and the present nomenclature of the Agro Rythu Seva Kendras is different to that of Agro Vikraya Seva Kendra which are the outlets of the Corporation under the administrative control of Regional Manager/Senior Marketing Officer and whereas the Agro Rythu Seva Kendras which is the creature under G.O.Ms.No.114, dated 20.05.2005. That the said GO envisages for providing employment to educated rural youth and the Corporation merely access a link between Manufacturer of Fertilisers, Entrepreneurs and farmers and that Agro Rythu Seva Kendra can be established by any educated youth by furnishing Bank Guarantee/Cash deposit of Rs.3 lakhs and having their own godowns and the

respondents-employees also at liberty to make an application to Corporation as and when advertisement/notification for setting up of Agro Rythu Seva Kendras by fulfilling the conditions. It is averred that six agricultural graduates namely Sri K.Gopal Reddy, Sri Rajeswar Reddy, Sri R.Srinivas, Sri N.Pitchayya, Sri A.Rajeswar and S.Visweswara Rao were engaged as Coordinators on contract/temporary basis for seasonal works through placement agencies as per the minutes of 220th Board Meeting held on 29.03.2006 with an intention to encourage unemployed youths as envisaged in G.O.Ms.No.114, dated 20.05.2005. It is contended that Sri Bh.Panduranga Reddy, Sri N.S.Rama Raju, Sri K.L.Raju and Sri D.Narender Rao who retired on attaining superannuation were re-engaged on different designations and nomenclature in as much as none of the above employees are specifically appointed to Agro Chemicals Division and all the employees belong to Engineering wing. It was further contended that the said employees belong to Engineering Wing of Corporation and not belongs to Agro Chemicals activity and that the said Engineering Wing is still existing and that even before retirement of said employees on superannuation, the Corporation requested the Government to accord permission for making appointment of new Engineering graduates. But the Government had not granted permission for recruitment on the plea that there is a ban on recruitment. That in the absence of sanction of recruitment of graduate engineers, the Corporation has taken a policy decision to hire the services of

contract/tenure basis as a temporary measure for the smooth flow of Administration of Engineering Wing and further to implement the schemes of the Government. After change of Government, the present Government had introduced various schemes for the benefit of Agriculturists for which the Corporation is acting as a Nodal Agency by implementing the schemes with a minimal man power i.e., without recruiting any further employees by taking the help of Contract Employee and there was no revival of Agro Chemicals Division even in spite of change in the Government. That Sri Bh.Panduranga Reddy was appointed as Senior Coordinator as himself has expressed inability to continue and further the Corporation hired the services of K.L.Raju as consultant for a period of one year as per G.O.Rt.No.571 Agriculture & Cooperation (FP.I) Department dated 07.06.2006. That Sri V.U.V Ramana, Agriculture Officer and Sri K.Krishna, Assistant Director of Sericulture were engaged on deputation basis to Agricultural Engineering Wing but not to Agro Chemicals Division, which has already been closed and that there is no discrimination with regard to continuation of employees in Agro Chemicals Division. Except B.V.Krishna Reddy and Sri G.Prasad, who are Junior Marketing Officers in Agro Chemicals Division and who are continued on the basis of stay in WP No.520 of 2003, the Corporation had already filed vacate petition. That the officers who have been brought on deputation for implementation of Government subsidy schemes, were repatriated to their parent department, after

completion of said scheme, as such, the writ petitioners cannot compare their cases with that of the deputationists. G.O.Ms.No.121, dated 31.10.1996 has no application to the appellant-Corporation, which aspect was affirmed by the learned Single Judge in **B.Kishan's** case (1 supra). It was further contended that the 1st respondent in WA.No.926 of 2013 was appointed as Senior Marketing Officer in the Corporation on 27.08.1991 and his services were utilized only as Senior Marketing Officer exclusively for activity of the Agro Chemicals Division only, as such, there is no comparison with Sri Y.V.Raghavaiah, who was appointed as Junior Assistant in common category and subsequently earned promotions in the Corporation. That consequent on the abolition of the Agro Chemicals Division, the services Sri Y.V.Raghavaiah were utilized in other division and he retired from service on 30.06.2004, i.e., prior to issuance of termination order to the writ petitioner. As such, case of the respondents-employees could not be compared with that of Sri Y.V.Ragahvaiah. Sri K.Krishna, Sri K.V.Narsaraju and Sri Ramanjaneyulu, who were brought on deputation belongs to Assistant Director of Agriculture/Sericulture cadre as they possess the requisite qualification & experience to hold the post of Regional Manager and to execute & monitor the Government subsidy scheme notified by the State Government consequent on the restructure of the Corporation, as such, the respondents-employees cannot be accommodated in the said post as they do not possess the requisite qualifications and experience.

That Sri G.Rambabu was continued on deputation in the Government department as per the orders of this Court in W.P.No.35924 of 1997 and subsequently Government also issued G.O.Rt.No.911, dated 08.09.2006 for placing his services at the disposal of the Government of India on 05.02.2003, as such, comparing the case of Sri G.Rambabu with that of respondents-employees for interfering with the termination order passed by the Corporation in respect of the respondents-employees is erroneous. Having found that G.O.Ms.No.121, dated 31.10.1996 has no application to the Corporation, learned Single Judge had set aside the order of termination passed by the Corporation against the respondents-employees. Though the appellant Corporation had furnished sufficient reasons for not accommodating the respondents-employees, the learned Single Judge had not considered the above defence put up by appellants in the counter affidavit to WPMP. As held by the learned Judge in **B.Kishan's** case by relying on the judgment reported in **Medical Council of India v. Silas Nelson (1993) 3 SCC 184,** wherein the Hon'ble Supreme Court held that equivalence has to be decided only by an expert body, that too, on technical and academic matters and since it is not in the domain of assessment or evaluation by the Court, the High Court should not have embarked on the determination of equivalence on the basis of sketchy materials placed before it.

12. This Court in **B.Kishan's** case (supra), while dealing with the examination of procedure adopted for termination or retrenchment of staff or officers, observed as follows:

> "Effecting retrenchment/terminating the services of all employees working in the division by offering them VRS, consequent upon closure of the agro chemical division, cannot be said either to be a method which could not have been adopted at all or to be such an arbitrary and irrational method as to fall foul of Article 14 of the Constitution of India. The procedure adopted by the respondent Corporation does not, therefore, call for interference."

Learned Single Judge in **B.Kishan's** case also observed that unless the Board of Directors of the Corporation, which is a primary decision making body, adopts the G.O.Ms.No.121, dated 31.10.1996, the same is not applicable to the appellant Corporation and that the said G.O has no universal application. Therefore, the contention of the learned counsel for the respondents-employees cannot be accepted.

13. In **S.Rami Reddy v. Vice-Chairman and Managing director, A.P. State Irrigation Development Corporation Ltd**[2], this Court held as follows:

> "It is no doubt true that the Supreme Court in Balamusalaiah has not issued any Mandamus directing the State Government to apply the roster backwards, but the fact remains that while leaving it open to the State Government to recast the G.O in the light of what had been stated in judgment, if deemed necessary by it, the apex Court in no uncertain and categorical terms held, that the principle and policy

[2] 2003 (6) ALT 390

behind reservation would be adequately met and would receive constitutional approval, if while retrenching employees, the roster followed in making appointments, is applied backwards. Had the Corporation considered this principle enunciated by the Supreme Court in Balamusalaiah, and had taken a conscious decision not to apply the principle for just and valid reasons, this Court would not be justified in issuing Mandamus directing the Corporation to apply the roster backwards in all cases of retrenchment. Admittedly, this aspect of the matter has neither been considered by the Board of Directors of the Corporation nor by the Government while issuing directions under Article 90 of the Articles of Association, and this clearly reveals non-application of mind by the Corporation as well as the Government to the constitutional protection provided by Articles 16 and 16(4-A) of the Constitution of India, to the employees belonging to Scheduled Castes and Scheduled Tribes."

But in the present case on hand, the Board of Directors of the appellant Corporation has considered the aspect and found that there is no feasibility of operating roster backwards in Agro Chemicals Division in as much as the Agro Chemicals Division was closed down, nor any equal posts with their qualification and experience exist in other Divisions of the Corporation. Though decision of Board is not correct on the ground of closure of Agro Chemicals Division, but Board also held that equal posts with their qualification and experience does not exist in other divisions, as such, the decision of the Board of Directors of the Corporation cannot be faulted.

Learned Judge in **B.Kishan's case,** by placing reliance in the judgment of the Hon'ble Supreme Court reported in **Ajit Singh (II) v.**

State of Punjab[3] rightly observed that there was a difference in the language employed in Article 16(1) on the one hand and Article 16(4) and Article 16(4-A) on the other and there was no directive or command in Article 16(4) and 16(4-A) as in Article 16(1) and that the language in each of Articles 16(4) and 16(4-A) was in the nature of enabling provision. In the said judgment, the Hon'ble Supreme Court did not confer any fundamental rights nor did they impose any constitutional duties but were only in the nature of enabling provisions vesting a discretion in the State to consider providing reservation if the circumstances mentioned in those articles so warranted. As such, the contention of the learned counsel for the respondents-employees that the Board had not considered the feasibility of roster backwards, cannot be accepted.

14. While considering the aspect of creation and abolition of posts, the learned Single Judge in **B.Kishan's case**, by referring to the several judgments of Hon'ble Supreme Court viz., **N.Ramanatha Pillai v. State of Kerala**[4], **K.Rajendran v. State of Tamilnadu**[5], **Dr.N.C.Singhal v. Union of India**[6], **T.Venkata Reddy v. State of A.P**[7], **State of Haryana v. Piara Singh**[8], **Rajendra v. State of Rajasthan**[9], **Union of India v. Lakhpati Singh Verma**[10] **and BALCO Employees Union v. Union of India**[11] observed that whether or not the Corporation should recruit personnel for the activity, relating to the setting up of agro rythu seva kendras, are

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[3] (1999) 7 SCC 209
[4] AIR 1973 SC 2641
[5] (1982) 2 SCC 273
[6] (1980) 3 SCC 29
[7] (1985) 3 SCC 198
[8] (1992) 4 SCC 118
[9] (1999) 2 SCC 317
[10] (2000) 10 SCC 525
[11] (2002) 2 SCC 333

matters in the realm of executive policy and since creation and abolition of posts is for the corporation, in its wisdom, to decide, no mandamus can be issued directing it to create posts or to fill up the said posts appointing the respondents herein.

In **N.Ramanatha Pillai v. State of Kerala (supra),** the Supreme Court held as follows:

> "…..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 posts are all decided by the Government in the interest of administration and general public…….the abolition of post may have the consequence of termination of service of a government servant. Such termination is not dismissal or removal within the meaning of Article 311 of Constitution. The opportunity of showing cause against the proposed penalty of dismissal or removal does not therefore arise in the case of abolition of post. The abolition of post is not a personal penalty against the government servant. The abolition of post is an executive policy decision. Whether after abolition of the post the Government servant who was holding the post would be offered any employment under the State would therefore be a matter of policy decision of the Government because the abolition of post does not confer on the person holding the abolished post any right to hold the post…. "

In **Dr.N.C.Singhal v. Union of India (supra)** the Hon'ble Supreme Court held as follows:

"……Creation and abolition of posts is a matter of government policy and 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. (See N.Ramanatha Pi8llai v. State of Kerala (AIR 1973 SC 2641). The court would be the least competent in the face of scanty material to decide whether the government acted honestly in creating a post or refusing to create a post or its decision suffers from malafide, legal or factual...."

Learned Judge in **B.Kishan's** case, while considering the judgments of Hon'ble Supreme Court refused to grant any mandamus to the appellant corporation directing it to create posts or to fill up the said posts appointing the respondents-employees herein, but only directed the Corporation to consider the case of the respondents and accommodate in other divisions, provided they have sufficient qualification and expertise in the relevant field. The appellant Corporation claims to have considered the case of the respondents *vis-a-vis.,* employees who are continued in other divisions and found that respondents could not be continued in the said posts. The appellant Corporation also found that some of the employees who were brought on deputation are being repatriated to their parent organization after the scheme is over or the term of the deputation is over. In fact, the contentions raised by the respondents were also raised in **B.Kishan's** case, but, the same are negatived.

15. Learned Single Judge compared the services of various employees and deputationists and persons working on contract basis and found fault with the decision of Board of

Directors of the Corporation for not accommodating the respondents-employees in those posts, in which deputationists were appointed, granted relief by setting aside the impugned termination orders. By doing so, the learned single Judge went into the merits of the decision taken by the Corporation, by granting mandamus, which was refused by this Court in **B.Kishan's case.** In fact, the Board proceedings No.Pers/AM(P)/008980/05, dated 13.04.2006, while comparing the educational qualifications and experience, found that Sri C.S.Reddy and Sri P.Sudhakar Reddy are more qualified experience than the respondents. It is to be seen that the learned Single Judge compared the cases of respondents-employees with that of others, who are deputationists, who are on contract basis and found fault with the Corporation for not continuing them, as contended by learned Senior Counsel. The respondents-employees never raised the contention that the said deputationists were continued in the Corporation beyond the specified period. In the absence of said contention, learned Single Judge travelled beyond the pleadings in the writ petition and set aside the impugned termination order passed by the Corporation, as contended by the learned Senior Counsel Sri G.Vidyasagar. Learned Judge in **B.Kishan's** case held that the scope of judicial review in these matters is limited and in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, would not sit in appeal over the decision of the Corporation nor would it weigh the pros and cons of the

decision and substitute its wisdom for that of the decision making authority. As rightly observed by the learned Single Judge in **B.Kishan's** case that this Court, would interfere, only if, the procedure adopted by the appellant Corporation is one which could not have been adopted at all or is wholly irrational, and arbitrary as to violate Articles 14 and 16 of the Constitution of India.

Therefore, we are of the considered view that the learned Judge was not right in allowing the writ petitions and granting reliefs to the respondents, dehors the decision in *B.Kishan's* case. As a matter of fact, we pointed out during the course of arguments that when none of the persons employed in the particular division had been continued in service, it was not possible for the respondents to stake a claim. In response to the said query raised during the course of hearing, the learned counsel for the respondents came up with additional documents after we reserved orders. These additional documents were sought to be filed along with a miscellaneous petition in W.A.M.P.No.745 of 2017, which is filed for reopening the case.

In order to give one opportunity to the respondents, we reopened the case after reserving orders and heard further arguments on the additional documents. But these additional documents do not advance the case of the respondents.

All the additional points which were sought to be raised by way of brief note filed along with reopening petition were not specifically raised in writ petition, enabling the appellant to controvert the same, but raised in writ appeal. More so, the respondents have stated in their counter that G.Ram Babu was continued in view of interim order in writ petition and similarly. B.V.Krishna Reddy & G.Prasad Rao were continued on the basis of interim order in W.P.No.520 of 2003, which aspect was already discussed earlier. Without factual foundation in Writ Petition, the respondents for the first time cannot raise fresh issue at this juncture by filing additional documents.

In view of above facts and circumstances, all the writ appeals are allowed and the impugned Common Order passed by the learned Single Judge in W.P.Nos.7764, 7765, 19505 & 20387 of 2006, dated 19.02.2013 is set aside.

There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in these writ appeals shall stand closed.

Contempt Case Nos.1979 and 1985 of 2014

Both the Contempt Cases are filed by the 1st respondents-employees in W.A.Nos.935 and 926 of 2013 respectively, for not implementing the orders of this Court dated 23.07.2013.

Since the writ appeals, which are filed against the impugned Common Order dated 19.02.2013 are allowed, nothing survives in Contempt Cases against the respondent in the said Contempt Cases. As such, both the Contempt Cases are dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending in these Contempt Cases shall stand dismissed.

V.RAMASUBRAMANIAN, J

A.RAJASHEKER REDDY, J

04-08-2017
kvs

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT APPEAL Nos.926, 935, 937 & 975 OF 2013
And
Contempt Case Nos.1979 and 1985 of 2014

Date: 04.08.2017

kvs

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते