THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition Nos.520 of 2003 & 14535 of 2009

COMMON ORDER:

W.P.no.520 of 2003 is filed by the petitioners requesting to issue a writ of Mandamus or any other order or direction declaring the notice, dated 28.12.2002, issued by the 3rd respondent-A.P Agro Industries Development Corporation, represented by its Vice-Chairman and Managing Director, in Ref. No.Pers/AM(P)/JM/8016/2002 requiring the petitioners therein to opt for Voluntary Retirement Scheme on or before 10-01-2003 under the threat of retrenchment as highly illegal, arbitrary & unjust and consequently set the same aside, by declaring clause (4) of G.O.Ms.no.16, Public Enterprises (PE.III) Department, dated 22.03.2001, as illegal, arbitrary and unjust.

1.1 The other writ petition, W.P.no.14535 of 2009 is filed by the 1st writ petitioner in the above writ petition requesting to issue a writ of Mandamus or any other appropriate writ or direction declaring the action of the respondents 1 & 2 in filling the regular post of Regional Managers by deputation officers, retired officers and on contract basis without considering the claims of eligible persons working in the 2nd respondent Corporation as illegal, arbitrary and consequently direct the respondents 1 & 2 to consider the claims of the petitioner for promotion to the post of Regional Manager and pass such other or further orders.

2. I have heard the submissions of *Sri M.Srikanth*, learned counsel representing *Sri D.V.Nagarjuna Babu*, learned counsel appearing for the writ petitioners in W.P.no.520 of 2003; of *Sri P.Ganga Rami Reddy*, learned counsel appearing for the petitioner in W.P.no.14535 of 2009, of *Sri Meher Chand Nori*, learned counsel appearing for respondents 3 & 4

in the first writ petition and for the 2nd respondent in the second writ petition, and, of learned Government Pleader for Agriculture appearing for the official respondents.

3. In view of the identity of the subject matter and the common issue involved in both the writ petitions and as the result in the first writ petition will have a bearing on the result in the second writ petition, both the parties requested for a joint hearing and accordingly made common submissions. Hence, this common order.

4. The case of the petitioners 1 & 2 in the first writ petition (W.P.no.520 of 2003) and the case of the 1st petitioner, who is the petitioner in the second writ petition (W.P.no.14535 of 2009), which are common, and the submissions made on their behalf, in brief, are as follows: The writ petitioners are graduates in Agricultural Science [B.Sc.(Agriculture)]. They were appointed, on Non Muster Roll ['NMR', for brevity], as Junior Marketing Officers. After working for sufficient length of time, when the 3rd respondent Corporation wanted to terminate their services as NMRs, they along with others filed W.P.no.2623 of 1992 on the file of this Court. The said writ petition was admitted; and, by order, dated 25.02.1992, passed in W.P.M.P.no.3250 of 1992, this Court, pending further orders, directed the 3rd respondent Corporation to continue the petitioners in the same jobs and on the same terms on which they were engaged. The said writ petition is pending. Later, the 3rd respondent Corporation, *vide* proceedings, dated 30.09.1995, regularized the services of the petitioners as Junior Marketing Officers with a basic pay scale of Rs.2,315/- But curiously, the 3rd respondent again issued proceedings, dated 11.12.1995, canceling the earlier proceedings, dated 30.09.1995. Challenging the

proceedings dated 11.12.1995, the petitioners filed W.P.no.28049 of 1995. The said writ petition was admitted. By orders, dated 13.12.1995, passed in W.P.M.P.no.34603 of 1995, this Court suspended the proceedings, dated 11.12.1995, of the 3rd respondent Corporation. The said writ petition is also pending. The 3rd respondent Corporation is established by the Government of Andhra Pradesh in order to cater to the needs in the agricultural sector. Initially, the Corporation undertook the job of land development. Later on, it expanded its activities. It established an Agro Chemicals Division for manufacture/procurement of pesticides, fertilizers and insecticides. The Corporation also entered the field of fruit preservation and processing. For the said purpose, the 3rd respondent established two industrial units at Khammam and Kurnool to manufacture pesticides. It also established one industrial unit at Anantharajupeta for fruit preservation and processing. Initially, the Corporation earned enormous profits from the extended activities and acquired large assets of more than Rs.100 Crores throughout the State. Despite the same, the Corporation incurred some losses due to administrative laches. The Government appointed an Expert Committee under the Chairmanship of a retired IAS officer to examine the working of Public Sector Undertakings including that of the subject Corporation. The said Committee submitted a report. Based on the said report, the Government represented by Principal Secretary, Agriculture & Co-operation Department issued G.O.Ms.no.282, Agriculture & Cooperation (P1) Department, dated 08.07.1997, to close down the Agro Chemical Division of the Corporation and ordered for removal of 291 employees. The said orders were issued basing on the list of employees submitted by the Corporation. The said list includes (55) persons exclusively recruited in Agro Chemicals Division, 200 persons from the common cadre and 36 NMRs and deputationists. After issuance of the said GO, the 3rd respondent Corporation issued different proceedings transferring various persons, who are in the recommended list to various places. 62 to 70 persons were retained by the Corporation. Insofar as the petitioners are concerned, the 3rd respondent Corporation communicated the proceedings, dated 11.07.1997, requiring them to exercise option for Voluntary Retirement Scheme. The said scheme is useful for the persons who have got long span of service. In the meanwhile, the petitioners submitted representations, dated 21.07.1997 and 01.08.1997, to the 3rd respondent Corporation along with few others, who are similarly situated and requested the Corporation to retain the petitioners and others on sympathetical and humanitarian grounds. In the said representations, the 1st writ petitioner stated that he was by then aged 38 years and is not eligible for any other employment in the government service. In the said circumstances, the petitioners filed W.P.no.2314 of 1998 and 552 of 1998 on the file of this Court questioning the notice, dated 18.10.1997, of the 3rd respondent Corporation requiring the petitioners to exercise their option to retire voluntarily. The said writ petitions were admitted. Interim orders to the effect that the petitioners' services shall not be terminated until further orders were passed. Pursuant to the directions of this Court, the petitioners were continued in the 3rd respondent Corporation. While so, the Government, represented by its Principal Secretary, Public Enterprises (PE Department), the 2nd respondent herein, once again issued proceedings, dated 10.07.2001, *vide* reference no. Pers/M (P & A) JM/696-2001. The said proceedings were received by the 1st writ petitioner, on 11.07.2001. The said proceedings were issued on the basis of the circular, dated 15.06.2001, bearing Circular no. Pers/M

(P&A)JM/696-2001. In the said proceedings, it is mentioned that the 3rd respondent Corporation has called for unconditional options for voluntary retirement under A.P Employees Voluntary Retirement Scheme (Phase-III), 2001 from the eligible employees and that though some applications have been received, the number of applications received or accepted do not commensurate with the surplus staff available. And hence, the Board of Directors had resolved to take up the action on the surplus employees, who failed to opt for voluntary retirement. The petitioners being juniors in the surplus employee's cadre are likely to be affected since the petitioners have not unconditionally opted for voluntary retirement. It is stated by the 3rd respondent that if unconditional option is not received on or before 20.07.2001, action would be taken for termination of services under the provisions of the Industrial Disputes Act/Service Rules of the Corporation. The petitioners then filed W.P.no.14840 of 2001 and 14839 of 2001 assailing the above mentioned action of the respondent Corporation. This Court is pleased to admit those two writ petitions and by interim orders, dated 20.07.2001, passed in W.P.M.P.nos.18563 of 2001 & 18562 of 2001, directed the 3rd respondent Corporation to continue the petitioners in service until further orders. The said writ petitions are stated to be pending. While so, the 3rd respondent served on the petitioners, a notice, dated 28.12.2002, *vide* Proceedings no. Pers/AM(P)/JM/8016/2002. Through the said proceedings, the petitioners were informed that the Government issued consolidated V.R.S. guidelines in G.O.Ms.no.16, Public Enterprise (P.E.III) Department, dated 22.03.2001, which is applicable to all public sector undertakings. The Board of Directors of the 3rd respondent Corporation in the meeting held, on 27.06.2002, approved the cadre strength of the Corporation at 313 as against the existing strength of 405 and authorized the Vice Chairman and Managing director of the Corporation to take further follow up action as per the Service Rules of the Corporation in the event of non receipt of VRS applications. The Government permitted the 3rd respondent Corporation to notify the 4th phase of the voluntary retirement scheme in respect of the surplus employees available in each cadre. Consequently, the petitioners were asked to opt for unconditional voluntary retirement on or before 10.01.2003, and they were threatened that their services would be terminated in accordance with the provisions of the Industrial Disputes Act/Service Rules of the Corporation in the event they fail to exercise the option for unconditional voluntary retirement before the said date. To the said proceedings, dated 30.11.2002, the 3rd respondent Corporation enclosed a circular, dated 30.11.2002, wherein the Corporation required all its branch offices to effect 4th phase of Voluntary Retirement Scheme in the lines mentioned supra. Proceedings, dated 28.12.2002, of the 3rd respondent Corporation are impugned in the present writ petition. The said proceedings are in violation of the orders of this Court in W.P.nos.14840 of 2001, 13839 of 2001, 2314 of 1998 & 552 of 1998 inasmuch as this Court directed the 3rd respondent Corporation to continue their services until further orders. Though the said writ petitions are pending, the 3rd respondent Corporation is now requiring the petitioners by way of the impugned proceedings to opt for Voluntary Retirement Scheme under the threat of retrenchment. This shows that the 3rd respondent Corporation has scant respect for the orders of this Court. In W.P.nos.552 of 1998 and 2314 of 1998, the petitioners have taken different stands that their initial appointments were not against any particular division; but, are general in nature; and that they were not appointed specifically in connection with any of the activities mentioned by the Corporation on which the Corporation wanted to terminate the services of the petitioners. During the tenure of the service, the petitioners were entrusted with the duties of marketing of agricultural implements and collections from beneficial farmers. Even now, the same situation is continuing. The proceedings related to allocation of work to the petitioners by the 3rd respondent Corporation would amply demonstrate the same. Hence, it is not open to the Corporation to show that the petitioners' services are no more required. The Voluntary Retirement Scheme as formulated by the 3rd respondent Corporation reflects that if an employee does not opt for voluntary retirement, his services would be terminated. Therefore, the said scheme is not a Voluntary Retirement Scheme. It has a coercive phenomenon to throw the employees out of service. Fundamentally, the scheme is unreasonable inasmuch as it lacks the element of voluntariness. The 3rd respondent being an instrumentality of the State ought not to have resorted to such coercive measure. As per the decisions of the Supreme Court, the said course adopted by the 3rd respondent Corporation, offends Article 14 of the Constitution of India. The notice issued by 3rd respondent Corporation to the petitioners demonstrates that except submitting to the command of the 3rd respondent, the petitioners have no other option. One Y.V. Raghavaiah, who opted for voluntary retirement in the cadre of Marketing Manager, has again been re-appointed in the 3rd respondent Corporation. It shows that there is no necessity for VRS.

5. The case of the 2nd respondent as stated in the counter affidavit filed in W.P.no.14535 of 2009 and the submissions made on its behalf are as follows: 'The services of Agricultural Graduates were engaged in the 2nd respondent Corporation on contract basis as NMR Junior Marketing

Officers (MOs) during Khariff and Rabi seasons of the year 1989 for a period not exceeding 60 days. At that time, on a consolidated pay of Rs.900/- per month plus Rs.200/- towards fixed TA, the services of the petitioner along with others were engaged as NMR Junior Marketing Officers during the Khariff season of 1989. During 1992, instructions were issued to Branch Officers to discontinue the services of NMR Junior Marketing Officers. So, the petitioner along with other Junior Marketing Officers approached this Court by filing W.P.no.2623 of 1992 and challenged the discontinuation orders of the Corporation and sought a direction to grant regular pay scale and to continue them in the service of the Corporation. This Court granted interim directions to continue the petitioners in the service of the Corporation till the writ petition is disposed of. Accordingly, the petitioners along with other NMR Junior Marketing Officers were continued in service. The petitioners along with other NMR Junior Marketing Officers submitted number of representations to the 2nd respondent Corporation requesting for regularization of their services. Their request was placed before the Board at its 156th & 166th Board Meetings held on 29.07.1992 & 30.05.1994, wherein it was resolved as follows: 'The services of the Junior Marketing Officers that are working at present may be considered for regularization after obtaining the exemption from the Government in respect of Employment Exchange and observing other statutory requirements, and also subject to exemptions to be considered by the Board in respect of qualifications, age etc. The above resolution is subject to the orders/directions that may be issued by the concerned Court, as the cases are pending in the Court.' As per the Board resolution, proposals were submitted to Government, seeking exemption from the Government in respect of Employment Exchange sponsorship and observing other statutory requirements and also subject to exemptions to be considered by the Board in respect of qualifications, age etcetera. But no orders were received from the Government. The APSAIC Employees Union and 96 NMRs including the petitioners filed W.P.no.15690 of 1995 seeking relief for regularization of their services and continuing them in service till the disposal of the Writ Petition and obtained interim orders to continue in service. When the matter stood thus, on one of the representations, dated 12.09.1995, made by the similarly situated NMR Junior Marketing Officers to the Minister for Agriculture requesting for regularization of their services, a decision was taken to regularize the services of 5 NMR Junior Marketing Officers including petitioners subject to ratification by the Board of Directors. Accordingly the petitioner along with four other similarly situated Junior Marketing Officers were offered the post of Junior Marketing Officers in the time scale of Rs.2315-4880 during September, 1995 subject to ratification by Board. However, the Board *vide* resolution No.2823, dated 27.11.1995, directed the Vice Chairman & Managing Director to cancel the proceedings issued to them as the proceedings were issued without Board's approval and as the Junior Marketing Officers are not eligible for regularization in terms of G.O.Ms.no.212, dated 22.04.1994. Pursuant to the above directions, the 2nd respondent Corporation cancelled the appointment orders issued to the Junior Marketing Officers including the petitioners. Aggrieved by the cancellation orders issued by the 2nd respondent Corporation, the petitioners and others approached this Court by filing W.P.no.28049 of 1995 and this Court while admitting the writ petition passed orders suspending the operation of the said cancellation orders. While the matter stood thus, the Government of Andhra Pradesh issued orders *vide* G.O.Ms.no.282, Agriculture &

Cooperation Department, dated 08.07.1997, for closure of Agro Chemicals Division including 2 Pesticides Formulation Units and Fruit Preservation unit at Anantarajupet as they were found to be non viable activities. It was also ordered to retrench 55 officers (i.e., Junior Marketing Officers, Marketing Officers, Senior Marketing Officers and Regional Managers) who were exclusively recruited for Agro Chemicals Division as per the service rules of the Corporation and directed that Voluntary Retirement Scheme may be extended to all the above 55 officers and other surplus employees in accordance with policy decision of the Government to adopt humane exit policy instead of terminating their services. Further, the retrenchment of 55 officers exclusively recruited for the Agro Chemicals Division will not come under the purview of the Industrial Disputes Act. However, the Government took a decision to adopt humane exit policy to provide Voluntary retirement with ex-gratia benefits to all the 55 officers exclusively recruited for Agro Chemicals Division. Accordingly, the 2nd respondent Corporation floated Voluntary Retirement scheme *vide* Circular, dated 11.07.1997 and notice, dated 18.10.1997, was served on the petitioner. The petitioner filed W.P.552 of 1998 challenging the Voluntary Retirement Notice, dated 18.10.1997, and obtained interim orders restraining the Corporation in termination of the service of the petitioner. Further, during the 3rd phase of Voluntary Retirement during 2001, voluntary retirement notice, dated 10.07.2001, was served upon the petitioner. The petitioner challenged the Voluntary Retirement Notice, dated 10.07.2001 by filing Writ Petition no.14840 of 2001 and sought relief to direct the respondent Corporation not to terminate his service and obtained *status quo* orders. All the five writ petitions, which were filed by Junior Marketing Officers including petitioner challenging the voluntary Retirement Notices were disposed of by common order, dated 25.09.2005, and a revised order was passed, on 27.11.2005, on the Review WPMP no.251145 of 1995. W.P.no.28049 of 1995 is allowed holding that it is needless to mention that this order will not have any bearing in considering the effect of disbandment of the Scheme on the petitioners on par with other regular employees. The post of Regional Manager (AC)/Marketing Officers/Senior Marketing Officers and Junior Marketing Officer are the posts, which are exclusively meant for Agro Chemicals Division and it is also well settled proposition of law that if a person is terminated due to closure of one of the units of the Corporation the Court cannot direct the Corporation to accommodate that person in other wings/departments of the Corporation and this proposition was held by the Supreme Court in District Red Cross Society v. Babita Arora & Others[1]. Insofar as the similarly situated persons employed in Agro Chemicals Division, who did not opt for the Voluntary Retirement Scheme, notices were issued for terminating their services. One K.Krishnam Raju, Regional Manager (Agro chemicals), filed W.P.no.26143 of 1997 questioning the validity of G.O.Ms.no.282, Agriculture & Co-operation, dated 08.07.1997, and another W.P.no.31959 of 1997 questioning the termination order, dated 21.11.1997, and Contempt Case no.58 of 1997. Both the writ petitions were dismissed by order, dated 05.04.1999. This Court was pleased to uphold the Voluntary Retirement Scheme issued in Circular, dated 11.07.1997, pursuant to G.O.Ms.no.282, dated 08.07.1997. Aggrieved by the order, dated 05.04.1999, one K.Krishnam Raju filed Writ Appeals no.703 & 801 of 1999. In the appeals, the orders of the learned Single Judge were affirmed. The 1st phase of voluntary retirement was issued pursuant to G.O.Ms.no.282, dated 08.07.1997; and the Voluntary

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Retirement framed thereafter was upheld by the learned Single Judge in the matter of B.Chakrapani, Regional Manager (Agro Chemicals) by judgment, dated 05.04.1999, rendered in W.P.no.32365 of 1997 and C.C.no.54 of 1997. The said judgment is equally applicable to the facts of the instant case also. Similarly, B.Kishan, G.Bapuji, who belonged to SC community filed W.P.no.30602 & 32265 of 1997 questioning the notice of termination, dated 18.10.1997, and seeking benefits under G.O.Ms.no.121 Social Welfare Department, dated 31.10.1996. But before interim directions were obtained, they were terminated from Corporation service. One P.Venkaiah, Senior Marketing Officer filed W.P.no.32265 of 1997 questioning the termination order, dated 17.11.1997, and sought for the benefits of G.O.Ms.no.121, Social Welfare (L-1) Department, dated 31.10.1996. This Court did not grant any interim relief. But, the writ petition was admitted. K.B.Jagan Mohan & P.S.S.Ravi kumar filed W.P.no.29326 of 1997 questioning the notice of termination, dated 18.10.997, and obtained *status quo* orders. Further, one E.Prabhudas questioned the proceedings, dated 29.10.1997, through which his voluntary retirement application was accepted and sought the benefits of G.O.Ms.no.121, Social Welfare (L-1) Department, dated 31.10.1996 and prayed in W.P.no.29327 of 1997 to continue him in the service of the Corporation and obtained *status quo* orders as on 06.11.1997. This Court disposed of all the writ petitions by its common order, dated 02.12.2005. In the above said order, which was reported in Bandugula Kishan and another v. Managing Director and Vice-Chairman, A.P. State Agro Industries Development Corporation Ltd., Hyderabad and another, this Court directed as follows: 'The Corporation shall consider operating the roaster 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.' In the above said judgment, the learned Single Judge was pleased to consider various aspects including establishment of Agro Rythuseva Kendras and accommodating them in equivalent posts. Pursuant to the disposal of above writ petitions, the Corporation has considered the cases of writ petitioners in terms of observations of the learned Single Judge and rejected the claim of the writ petitioners therein, by passing an elaborate speaking order, dated 13.04.2006. Aggrieved by the said termination order, P.S.S.Ravi Kumar and K.B.Jagan Mohan filed individual writ petitions against the Government and Corporation praying to suspend the operation of the termination proceedings, dated 13.04.2006, issued by the Corporation so as to continue them as Senior Marketing Officer or in equivalent posts in the Corporation. By the time the *status quo* order was granted by this Court, P.S.S.Ravi Kumar and K.B.Jagan Mohan were terminated and relieved from the services of the Corporation. Subsequently, P.S.S.Ravi Kumar and K.B. Jagan Mohan filed separate miscellaneous petitions in the main writ petition

W.P.no.7765 of 2006 & 7764 of 2006 respectively for the same relief and after hearing both sides, this Court passed the following order, dated 04.10.2007 in WPMP no.17906 of 2007 in W.P.no.7765 of 2006.

> 'There shall be a direction to the respondents to consider the case of the petitioner for being engaging his services as Senior Marketing Officer or Regional Manager or any equivalent post, which is vacant as of now, in the respondent organization, within a period of six weeks from today and communicate the same to the petitioner. WPMP is disposed of accordingly.'

On receipt of the Court orders, speaking orders were communicated to P.S.S.Ravi Kumar & K.B.Jagan Mohan, on 18.11.2007, wherein, it was clearly stated that the Corporation is not in a position to accommodate them as Senior Marketing Officer/Regional Manager as there were no posts existing vacant in any other division with the qualification prescribed for the post of Marketing Officer/Senior Marketing Officers; certain posts of Junior Assistants/Senior Assistants were, however available in the Corporation and that they can be accommodated in those posts as the qualification prescribed for these posts is graduation. In response to the speaking orders of the Corporation, dated 08.11.2007, P.S.S.Ravi Kumar & K.B.Jagan Mohan submitted separate representations, dated 19.06.2008 & 22.06.2008, respectively conveying their willingness to accept the lower post of Senior Assistant. As stated supra, the learned Single Judge elaborately dealt with all aspects. The learned Single Judge did not agree with the contention that they were exclusively recruited to Agro Chemicals Division. The learned Single Judge directed the Corporation to consider operating the roaster backwards insofar as the petitioners are concerned to the Scheduled Castes and to 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, and further directed 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 made by the learned Single Judge. In view of the above findings of this Court, the Scheduled Caste candidates pertaining to the above writ petition were accommodated in the lower post of Senior Assistant. Since the Agro Chemicals Division was closed, as per the directions given by the Government for restructuring of the Corporation as per G.O.Ms.no.282, dated 08.07.1997, 55 officers [Junior Marketing Officer, Marketing Officers, Senior Marketing Officers and Regional Managers (AC)], who were exclusively recruited for Agro Chemicals Division were ordered to be retrenched. Consequent to the closure of Agro Chemicals Division, all the posts automatically got abolished; and as such, the petitioner cannot agitate for promotion to the abolished posts of Agro Chemicals Division and the petitioner is continuing in the service of the Corporation against the interim orders in W.P.no.520 of 2003 and the petitioner is not in the approved cadre strength of the 2nd respondent Corporation. The VR Scheme framed by the Corporation was upheld by this Court and the similarly situated persons were permitted to go on VRS. The judgment of this Court in W.P.no.26143, 31959 of 1997 and 32365 of 1997 upholding the validity of Voluntary Retirement Scheme is squarely applicable to the petitioner in this writ petition. During the implementation of the 4th phase of Voluntary Retirement Scheme, the petitioner & another filed one more writ petition W.P.no.520 of 2003 challenging the Voluntary Retirement Notice, dated 28.12.2002 and also Clause no.4 in G.O.Ms.no.16, Public Enterprise (PE.III) Department, dated 22.03.2001 and sought relief to suspend the operation of notice and this Court granted interim suspension. While the matter stood thus, this Court disposed of W.P.no.15960 of 1996, which was filed by APSAIC Employees Union, wherein the petitioner is also party and passed order, dated 23.06.2005, with the following directions:

> "The respondent is directed to fill up the said 11 vacancies with the persons from among the petitioners immediately after obtaining permission from the Government.
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> Insofar as remaining 18 petitioners are concerned respondent shall explore the feasibility of absorbing them on regular basis as per G.O.Ms.no.212, dated 22.04.1994, since they have completed more than 12 years of service as on date and till such time, the said 18 petitioners shall be continued in service on the same terms and conditions as on today."

Further, this Court, while disposing of batch of writ petitions in W.P.nos.28049 of 1995, 552 of 1998, 2314 of 1998, 14839 of 2001 & 14840 of 2001 filed by the petitioner and another, on 25.07.2005, and passed the following order:

> 'Accordingly, the writ petitions are disposed of following the order passed in the writ petition no.15960 of 1995, dated 23.06.2005, in the same terms. However, this order will not preclude the petitioners from making a detailed representation, if they have got any other grievance, as to the fixation of salary etc., for the service rendered by them earlier in the organization and the same shall be considered within a period of two months from the date of receipt of representation, in accordance with law."

However, the petitioner filed Review Petition in WPMP no.25145 of 2005 in W.P.no.28049 of 1995 seeking to review the order, dated 25.07.2005 and this Court disposed of the Review Petition, on 29.11.2005, by modifying the order, dated 25.07.2005, passed in W.P.no.28049 of 1995 with the following:

> 'The petitioners are entitled for regularization of their services as on the date when their cases were considered by the respondent, therefore, the impugned orders in the writ petition are arbitrary and illegal and are liable to be set aside.
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> Consequently, the W.P.No.28049 of 1995 is allowed to the extent indicated above. It is needless to mention that this order will not have any bearing in considering the effect of disbandment of the scheme on the petitioners on par with other regular employees'.

All the five writ petitions filed by the similarly situated Junior Marketing Officers including petitioner challenging the Voluntary Retirement Notices were disposed of by common order, dated 25.07.2005, without any specific order as stated supra. Further, the subject matter relating to regularization of service of NMR Junior Marketing Officers based on the common judgment delivered by this Court was placed before the Board at its 220th Board Meeting held, on 29.03.2006, and the Board after due deliberation authorized the Chairman to take a decision in the matter, *vide* resolution no.3698. Accordingly, orders were issued to release the annual grade increments due to the petitioner along with another without prejudice to legal rights in view of the pendency of W.P.no.520 of 2003 for disposal before this Court. The Junior Marketing Officer posts are not in the approved cadre strength of the Corporation and the posts of Junior Marketing Officers/Marketing Officers/Senior Marketing Officers and Regional Managers (Agro Chemicals) got abolished consequent to the closure of Agro Chemicals Division of the Corporation as per the Government Orders and the petitioner and another Junior Marketing Officer are continuing only against the interim orders of this Court in W.P.no.520 of 2003. Consequent to the closure of Agro Chemicals Division, as per G.O.Ms.no.282, dated 08.07.1997, the posts of 55 officers (i.e., Junior Marketing Officers, Marketing Officers, Senior Marketing Officers and Regional Managers), who were exclusively recruited for Agro Chemicals Division were got abolished and they were extended Voluntary Retirement Scheme and as such no hierarchy posts exist in the Corporation for marketing staff. Further, the alleged post of Regional Manager as claimed by the petitioner pertains to Engineering Division as per the approved cadre strength but not to Agro Chemicals Division, which was already closed and got abolished consequent on VRS.

The Government of Andhra Pradesh has issued G.O.Ms.no.113, Agriculture & Co-operation (FP.I) Department, dated 18.05.2005, by which the Corporation was appointed as a Nodal Agency for implementing Farm Mechanization Schemes of Department of Agriculture and Horticulture and also for supply of Plant Protection Equipment. Taiwan Sprayers and Drip Irrigation Systems are taken up under the subsidy schemes. Under the schemes, the Corporation procures Plant Protection Equipments, Taiwan Sprayers and Drip Irrigation Systems and supplies to the farmers on subsidy provided by the Government. Mere setting up of Agro Rythu Seva Kendras all over the State and the Corporation acting as Nodal Agent for implementing Farm Mechanization Schemes, does not amount to revival of Agro Chemical Division. Some of the Assistant Directors of Agriculture from the Department of Agriculture/Sericulture were engaged on deputation basis. These persons are brought on deputation to Agricultural Engineering Wing but not to Agro Chemicals Division, which has already been closed and there is no discrimination with regard to continuation of employees in Agro Chemicals Division. The averment that the petitioner is eligible for the post of Regional Manager is not true & correct. Junior Marketing Officer Scale is equivalent to Senior Assistant/Senior Accountant scale; the next cadre to Senior Assistant is Junior Manager; the next cadre to Junior Manager is Assistant Manager in Administration/Accounts Department; whereas in Engineering side, Junior Marketing Officer cadre is equivalent to Senior Mechanic; and hierarchy cadres are Engineer, Assistant Manager (Agriculture Engineering) & Deputy Manager/Regional Manager (Agricultural Engineering). The cadre next to Assistant Manager (AE) is Regional Manager (AE). At present, the petitioner is claiming promotion to the cadre of Regional Manager (Agricultural Engineering), which does not pertain to the closed activity of the Corporation as the Agro Chemicals Division posts have already got abolished consequent on closure of Agro Chemicals Division of the Corporation. In this connection, there are 30 Junior Managers both in Administration as well as Accounts side, which pertain to Engineering Division available at present in the Corporation. They are seniors to the petitioner and are eligible for the next promotion post of Assistant Managers; whereas the petitioner belongs to Junior Marketing Officer Cadre, which was already abolished consequent on closure of Agro Chemicals Division by virtue of Government order *vide* G.O.Ms.no.282, dated 08.07.1997. The Corporation requested the Government to accord permission for making appointment of new Engineering Graduates at that time and the Government has not granted permission for recruitment on the plea that there is ban on recruitment. In the absence of sanction of recruitment of graduate engineers, the Corporation took a policy decision to hire the services on contract/tenure basis as a temporary measure for the smooth flow of administration of Engineering Wing and further to implement the present schemes of the Government as the Corporation is acting as Nodal Agency by implementing the schemes with a minimal man power, that is, without recruiting any further employees by taking the help of contract employees. A paper notification was issued inviting applications from the unemployed Graduates for appointment as an Entrepreneur to set up Agro Rythu Seva Kendras. The said activity is to be monitored out of the existing staff as per the approved cadre strength without resorting to further recruitment as per the present policy of the Government. As the continuation of the scheme is subject to viability and useful needs to the farming community, the Management is not considering to go for recruitment for the present till the scheme is made available & serves the purpose. After the Manpower Planning is made, the lower cadres will be elevated to the next higher cadre and the existing vacancies consequent on promotions will be filled in by recruitment. The writ petition is devoid of merit and is liable to be dismissed with costs.

6. The 2nd petitioner in W.P.no.520 of 2003 filed additional affidavit on behalf of both the petitioners. The averments in the additional affidavit, in brief, are as follows:

The services of the petitioners were regularized and they were granted time scale. As on today, the petitioners are working as Incharge Regional Managers on *ad hoc* basis. The petitioner is working in Anantapur District and the 1st petitioner is working in Guntur District. The cadre of Junior Marketing Officer is Feeder category to the Assistant Manager Cadre and the Assistant Manager cadre is feeder category to the Regional Managers category. The 1st respondent issued proceedings no.Pers/MoP&A/Promotions/2016, dated 13.10.2016, promoting the petitioners to the cadre of the Assistant Managers, i.e., as Assistant Managers. In the above proceedings, it is categorically mentioned that their promotions were affected in view of the shortage of personnel at the field level. Further, even after their promotion to the cadre of the Assistant Manager category, there are three more vacancies existing as of now. Apart from the above, they were given annual increments in routine course in the cadre of Assistant Managers.

7. The 3rd respondent in W.P.no.520 of 2003 filed counter affidavit. The averments in the counter affidavit, in brief, are as follows: 'The respondent Corporation is a registered company under the Companies Act and the affairs of the Corporation are managed by the Board of

Directors of the Corporation appointed by the Government of Andhra Pradesh and the Government of India. The main activities of the Corporation were sale of fertilizers & pesticides, formulation of pesticides, fruit processing and land development. The Government of Andhra Pradesh, *vide* G.O.Ms.no.282, Agriculture & Co-operation (FP.I) Department, dated 08.07.1997, appointed an Expert Committee to examine the working of the Public Sector Undertakings. Basing on the recommendations of the expert committee and cabinet sub-committee, the Government ordered for closure of the Agro Chemical Divisions and consequently retrench 55 nos. of officers exclusively recruited for Agro Chemical Division and 200 common cadre employees and NMRs working in the Agro Chemical Division and the persons governed by the Industrial Disputes Act will be retrenched following the procedure laid down. Certain employees in the 1st phase did not opt for Voluntary Retirement. The Corporation after issuance of notices terminated their services. However, aggrieved of the orders of termination, one B.Chakrapani & K.Krishnam Raju filed writ petitions. This Court issued directions to the respondent Corporation to give one more opportunity to the petitioners to opt for Voluntary Retirement Scheme by following G.O.Ms.no.282, dated 08.07.1997, and V.R. Circular, dated 11.7.1997. However, the petitioners aggrieved by the orders of the learned Single Judge, filed W.A.nos.703 & 801 of 1999 and the Division Bench upheld the orders of the learned Single Judge. The Voluntary Retirement Scheme, dated 11.07.1997, framed as per the guidelines issued, *vide* Government Memo no.1038, dated 23.11.1996, is similar to that of the guidelines framed pursuant to the G.O.Ms.no.16, dated 22.03.2001. This Court, by orders, dated 05.04.1999, dismissed W.P.no.26143 of 1997, 31959 of 1997, and the said orders were confirmed in Writ Appeal nos.703 & 801 of 1999, dated 18.06.1999. The Government of Andhra Pradesh, *vide* G.O.Ms.no.16, Public Enterprises (PE.III) Department, dated 22.03.2001 circulated revised guidelines for implementation of the Voluntary Retirement Scheme in State Level Public Undertakings, rearranged the implicit clause in Government Memo No.1038/23-1-1996 under eligibility "an employee who has been completed 10 years of service or completed 40 years of age and who has been identified by management is to be brought under the V.R. Scheme. The cases of the employees who were not eligible for the VRS will be dealt with under the legal provisions of the appropriate enactments in explicit term of the clause 4 eligibility". An employee who has been identified by the management to be brought under the VRS can opt for the scheme within the prescribed time. If any employee who has been identified by the management to be brought under the VRS does not opt for the VRS, he/she will be retrenched under the staff Regulations/ID Act. Clause (5) contemplates and provides that the scheme shall not be applicable to (a) Employees, who are due to retire on superannuation within one year from the date of application; b) Deputationists; c) Temporary or casual employees and employees on consolidated wages; d) Employees on contract basis. Clause (7) of the above said GO contemplates the benefits out of the Voluntary Retirement; clause (8) deals with implementation of VRS; and, clause (9) deals with the procedure regarding Voluntary Retirement Scheme. Since implementation of 1st phase of Voluntary Retirement Scheme, the Corporation closed two Branch Offices at Khammam & Guntur, and merged the Central Workshop with the Regional Office, Hyderabad. Consequent upon sale of unwanted machinery & closure of two Branch Offices and merger of workshop complex with Regional Office, Hyderabad, certain technical staff and corresponding staff in other cadres also became surplus. The whole exercise of recadering of the cadre strength was solely based on major policy decision taken by the Government as well as the Corporation so as to enable the Corporation to make it viable. The Board of Directors discussed the matter and *vide* Resolution no.3429, approved the proposed cadre strength of 313 and to implement IV phase of Voluntary Retirement Scheme, as per the guidelines issued by the Government to reduce the staff strength to the required level duly seeking clearance from the Government and further authorized the VC & MD to take follow up action as per the Service Rules of the Corporation in the event of non-receipt of required applications opting for VRS. The Corporation retired 30 NMR consolidated wagers during the month of November 2002 after due permission from the Government of Andhra Pradesh. The Corporation offered VR Scheme III phase to the surplus employees, *vide* Circular No.Pers/M (P&A)/606/2001, dated 15.6.2001, as per provision of G.O.Ms.no.16, Public Enterprises (PE.III) Department, dated 22.03.2001, and accepted the applications received. It is well settled law that encadrement and decadrement of a post is a policy matter, which has to be taken by the executive by taking into consideration all relevant factors. The Government of Andhra Pradesh issued G.O.Ms.no.16, Public Enterprises (PE.III) Department, dated 22.03.2001, issued consolidated guidelines to Voluntary Retirement Scheme to the employees of the public sector undertakings/Cooperative Institutions and other undertakings. The said GO was challenged before this Court in W.P.nos.2477, 2506, 2510, 3706, 4643, 6217 of 2002 and the said writ petitions were dismissed upholding the validity of the said GO. The petitioners herein are similarly situated persons as in the aforesaid batch of writ petitions. Writ Petition against a show-cause notice is not maintainable. Many of the surplus cadre employees including the writ petitioner did not opt for Voluntary Retirement, but, however, filed the writ petition seeking direction for declaring the proceedings, dated 28.12.2002, as illegal and to continue the petitioner in service. The writ petition is misconceived. This Court upheld the validity of the Voluntary Retirement Scheme, as per G.O.Ms.no.282 and circular, dated 11.07.1997, in W.P.nos.26143 of 1997, 32365 of 1997 and 31959 of 1997. This Court further directed the respondent Corporation to give one more opportunity to the petitioner to opt for Voluntary Retirement Scheme by following G.O.Ms.no.282, dated 08.07.1997, and V.R. Circular, dated 11.07.1997. The Voluntary Retirement scheme as formulated by the Corporation is neither coercive nor compulsive. The writ petition is devoid of merit and is liable to be dismissed.

8. The respondents 3 & 4 in W.P.no.520 of 2003 filed additional counter affidavit *inter alia* contending as follows:

The petitioners filed the instant writ petition invoking the extraordinary original jurisdiction under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus declaring the notice issued by the 3rd respondent in Pers/AMP/JM/8016/2002, Dt.28.12.2002 requiring the petitioners to opt for Voluntary Retirement Scheme on or before 10.01.2003 under the threat of retrenchment as illegal, arbitrary and unjust and consequently set aside the same, if necessary, by declaring clause 4 of G.O.Ms.no.16, Public Enterprise (PE.III) Department, Dt.22.03.2001 as illegal and arbitrary.

This Court suspended the notice dated 28.12.2002, issued in Pers/AMP/JM/8016/2002, issued by the 3rd respondent, wherein the petitioners are required to opt for Voluntary Retirement Scheme on or before 10.01.2003 and by virtue of the interim orders passed by this

Court. By virtue of the interim orders passed by this Court, the petitioners are continuing in service. An *ad hoc* promotee could not be treated to be a member of the service as held by the Supreme Court in Sunaina Sharma v. State of Jammu & Kashmir, on 26th October, 2017, in Civil Appeal No.4594-4595 of 2017. Further, the *ad hoc* promotion given to Group 'B' officers in Group 'A' service, pursuant to the interim order of the Supreme Court "would not, therefore, have any effect or prejudice the interest or rights of the direct recruits of Group 'A' service while rearranging the seniority in Group 'A' service as indicated in the judgment" as held by the Allahabad High Court in Union of India & Another v. Sukhjinder Jit Singh & three others, on 10th April, 2017 in Writ Appeal no.14897 of 2016. As such, the temporary promotions given to the petitioners do not entitle them any right to continue in service. The fact remains that their *ad hoc* promotions are subject to outcome in the instant writ petition as indicated in their *ad hoc* promotion orders. The allegation that their services were regularized is not correct. In fact, their services as NMRs were regularized and subsequently, VRS was introduced. Challenging the same, they filed the above writ petition and obtained interim orders. Subsequently, *ad hoc* promotions were given to him. As stated above, the *ad hoc* promotions given to them do not create any right on them to continue in service.

The implementation of V.R. Scheme, as contemplated especially under Clause 8(ii) of G.O.Ms.no.16, the Corporation identified the surplus staff category wise in various departments of the Organization. The whole exercise of re-cadering the cadre strength was solely based on major policy decision taken by the Government as well as the Corporation, so as to enable the Corporation to make it viable. The matter was placed before the Board of Directors and they discussed the matter and resolved, *vide* Resolution no.3429 approved the proposed cadre strength of 313 and to implement IV phase of Voluntary Retirement Scheme as per the Guidelines issued by the Government to reduce the staff strength to the required level duly seeking clearance from the Government and further authorized VC & MD to take further follow up action as per the Service Rules of the Corporation, in the event of non-receipt of required applications opting for voluntary retirement. It is well settled law that encadrement and de-cadrement of a post is a policy matter which has to be taken by the executive by taking into all relevant factors. It is also well settled law that normally the Court does not interfere with the policy matters of Government. As stated supra, the Government of Andhra Pradesh have issued G.O.Ms.no.16, dated 22.03.2001, framing consolidated guidelines to VRS to the employees of Public Sector Undertakings/Cooperative Institutions and other State Undertakings. The said GO was upheld by this Court by judgment, dated 05.09.2002, rendered in W.P.no.2477 of 2002 & batch. The Government issued G.O.Ms.no.50, dated 15.11.2001, whereunder, cadre strength of the 3rd respondent Corporation was down sized from 948 to 404 and it was the subject matter of challenge in W.P.No.24647 of 2001 and the said writ petition was dismissed by this Court, by order, dated 04.06.2002, wherein this Court held that there is no illegality or legal infirmity in the said G.O and in the Writ Appeal filed against the said orders, no interim orders were passed. In the instant case, the respondents have taken a policy decision for better functioning and viability of the Corporation and the action of the Board of Directors was approved by the Government *vide* letter no.1728/PE.II/A1/2002, dated 23.11.2002. This Court, by order, dated 05.04.1999, passed in W.P.no.26143 of 1997 & batch upheld the validity of the VRS issued in

G.O.Ms.no.82 and Circular, dated 11.07.1997, and further directed the respondent Corporation to give one more opportunity to the petitioners to opt for VRS by following G.O.Ms.no.282, dated 08.07.1997, and V.R. Circular, dated 11.7.1997. The said orders were upheld in W.A.Nos.703 & 801 of 1999. In view of the orders of this Court in other writ petitions, NMRs and SC & ST employees are continuing and this issue has no bearing to the instant writ petition. The Voluntary Retirement Scheme as formulated by the Corporation as per G.O.Ms.no.16, dated 22.03.2001, is neither coercive nor compulsive. Two posts of Junior Marketing Officers are surplus to the requirement of Corporation and the proceedings issued *vide* no.Pers/AMP/JM/8016/2002, dated 28.12.2002, are in order and the claim of the petitioners is untenable. This Court while disposing of the batch of writ petitions, i.e., W.P.nos.28049 of 1995 & batch, passed the following order:

> "Accordingly, the Writ Petitions are disposed of following the order passed in W.P.no.15960/1995, dated 23.6.2005 in the same terms. However, this order will not preclude the petitioners from making a detailed representation, if they have got any other grievance, as to the fixation of salary etc., for the service rendered by them earlier in the organization and the same shall be considered within a period of two months from the date of receipt of representation, in accordance with law."

Hence, the petitioners filed Review petition in W.P.M.P.no.25145 of 2005 in W.P.no.28049 of 1995 seeking to review the order, dated 25.7.2005, and this Court disposed of the review petition, by order, dated 29.11.2005, modifying the order, dated 25.7.2005, passed in W.P.No.28049 of 1995 with the following observations:

> "The petitioners are entitled for regularization of their services as on the date when their cases were considered by the respondent, therefore, the impugned orders in writ petition are arbitrary and illegal and are liable to be set aside.
>
> Consequently, W.P.no.28049 of 1995 is allowed to the extent indicated above. It is needless to mention that this order will not have any bearing in considering the effect of disbandment of the scheme on the petitioners on par with other regular employees."

The subject matter relating to regularization of NMR Junior Marketing Officers based on the common judgment delivered by this Court was placed before the Board in its 220th Board meeting held, on 29.03.2006, and the Board after due deliberation authorized the Chairman to take a decision in the matter *vide* Resolution no.3698. Accordingly, orders were issued to release the annual grade increments due to the petitioner along with another without prejudice to legal rights in view of the pendency of W.P.No.520/2003 before this Court. The Junior Marketing Officer posts are not in the approved cadre strength of the Corporation and the posts of Junior Marketing Officers/Marketing Officers/Senior Marketing Officers and Regional Managers (Agro Chemicals) got abolished, consequent on the closure of Agro Chemicals activity of the Corporation as per Government Orders and the petitioners herein are continuing only pursuant to the interim orders of this Court in the present writ petition. Consequent on the closure of Agro Chemicals activity as per G.O.Ms.no.282, dated 8.78.1997, the 55 officers, i.e., Junior Marketing officers/Marketing Officers/Senior Marketing Officers and Regional Managers, who are exclusively recruited for Agro Chemicals Division were got abolished on extension of VRS to them and as such, there is no hierarchy posts existing in the Corporation for the marketing staff continuing against interim orders of this Court. The alleged post of Regional Manager as claimed by the petitioners pertains to Engineering Division as per the approved cadre strength, but not to Agro Chemicals Division, which was already closed and got abolished consequent on VRS, Government of Andhra Pradesh issued G.O.Ms.no.113, Agriculture and Cooperation (F.P.I) Department, dated 18.5.2005 by which the Corporation was appointed as Nodal Agency for implementing Farm Mechanization schemes of the Department of Agriculture and

Horticulture and also for supply of Plant Protection Equipment, Taiwan Sprayers and Drip Irrigation systems that are taken up under the subsidy schemes; that is to say that the Corporation procures Plant Protection Equipment, Taiwan Sprayers and Drip Irrigation systems on the subsidy rate provided by the Government. Mere setting up of Agro Rythu Seva Kendras all over the State and Corporation acts as Nodal Agency for implementing Farm Mechanization Schemes, does not amount to revival of Agro Chemical Division.

The averment that the petitioner is eligible for promotion to the post of Regional Manager is not correct. The Junior Marketing Officer scale is equivalent to Senior Assistant/Senior Accountant Sale, the next cadre to Junior Manager is Assistant Manager in Administration/Accounts Department; whereas in Engineering side, Junior Marketing Officer cadre is equivalent to Senior Mechanic and hierarchy cadres are Engineer, Asst. Manager (Agri. Engg.), Deputy Manager/Regional Manager (Agril. Engg). The Asst. Manager's next cadre is Regional Manager. The petitioners are claiming promotion to the cadre of Regional Manager (Agricultural Engineering) which does not pertain to closed activity of the Corporation as the Agro Chemicals Division posts have already got abolished, consequent upon closure of Agro Chemicals Division of the Corporation. The petitioners belong to Junior Marketing Officer cadre, which was already abolished consequent on closure of Agro Chemicals Activity by virtue of Government Order *vide* G.O.Ms.no.282, dated 8.7.1997.

The temporary promotions given to the petitioners do not entitle them any right to continue in service. In the decision rendered in B.Rehelamma & others v. A.P. State Agro Industries Development Corporation Ltd., Hyderabad & Others[2], this Court held that "Abolition of post causes cessation of right to hold the post. Petitioners cannot

[2] 2004 (4) ALD 181

claim any vested right in posts abolished. No direction for creation of supernumerary posts can be given, when once posts are abolished. When Corporation has taken decision in the interest of Corporation, it is not proper to attribute malice or ill will to Corporation." In the said decision, it is also held that "High Court cannot go into question whether poor financial position of Corporation was the upshot of mismanagement of Board of Directors. It is only the Government or the Agency authorized by it can consider it." In the decision in B.Kishan and another v. Managing Director & Vice Chairman, A.P State Agro Industries Development Corporation Ltd., Hyderabad and another held that "procedure adopted by Corporation for termination/ retrenchment of staff/officers cannot be said 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. Procedure adopted by the Corporation does not, therefore, call for interference." In the said decision, it is also held that "Courts have neither expertise nor wherewithal to determine questions relating to equivalence of qualifications and equation of posts. Such questions to be evaluated by employer Corporation on a detailed consideration of all aspects." In the decision reported in Irrigation Development Employees Association & Others v. Government of AP & Others[3], this Court held that "the Corporation is funded by the State. Article 90 of Memorandum of Articles empower the Government to issue directions regarding the staffing pattern, Government deciding to downsize the strength of the employees of the State undertaking resulting in abolition of posts, in view of lack of funds cannot be said to be arbitrary. In view of the settled law, there are no merits in the writ petition and it is liable to be dismissed."

[3] 2004 (2) ALD 599 (DB)

9. The 2nd petitioner in W.P.no.520 of 2003 filed reply to the Additional Counter affidavit filed by respondents 3 & 4 *inter alia* alleging as follows:

The Government of Andhra Pradesh issued G.O.Ms.mo.113, dated 18.05.2005, wherein orders were issued to the 3rd respondent Corporation to appoint as Nodal Agency for implementing Farm Mechanization schemes for supply of Farm Machinery, PP Equipments, Thaiwan Sprayers, Sprinklers, Drip Systems under subsidy schemes of Department of Agriculture. The Government of Andhra Pradesh issued G.O.Ms.no.114, dated 20.5.2005, according permission to the 3rd respondent Corporation to set up Agro Rythu Seva Kendras for routing the produce like seeds, Fertilizers, pesticides and implements to supply to the farmers on time ensuring quality and price line. The petitioners' services are being utilized in crucial activities of the Corporation and they are working against the cadre strength of the Corporation. The petitioners are recruited in the respondent Corporation and possessed required qualification in B.Sc (Agriculture) and experience in all activities of the Corporation and rendered 29 years of service on the interim orders of this Court. The services of the petitioners were regularized in Time Scale of Junior Marketing Officer, *vide* order, dated 04.09.2006. Subsequently, they were promoted as Assistant Managers, as per the approved cadre strength of the Corporation. After rendering 29 years of service and the Corporation utilizing their services in different activities, the respondent Corporation is contending that the petitioners have no posts in the Corporation, which is not justifiable. The petitioners are working in the approved cadre strength of the Corporation and the respondent Corporation is trying to neck out the petitioners who are at the verge of retirement. Having no other efficacious remedy except to invoke the extraordinary jurisdiction of this Court, the petitioners moved the instant writ petition. Hence, it is prayed to allow the writ petition.

10. I have gone through the pleadings and the material record in both the writ petitions. I have given earnest consideration to the facts & submissions.

11. Though the pleadings are lengthy, in view of the undisputed facts & chronology of events and the crux of the matter, this Court is of the view that the issues involved and the contentions raised need not engage this Court for long.

12. To begin with, it is to be noted that in the first writ petition viz., WP.No.520 of 2003 the challenge is to the notice, dated 28.12.2002, issued by the 3rd respondent. A request is also made in the said writ petition to declare clause 4 of GOMs.No.16, dated 22.03.2001, as illegal and arbitrary. A perusal of the impugned notice shows that the Government, *vide* its letter, dated 23.11.2002, permitted the Corporation to notify IV phase voluntary retirement scheme under the guidelines communicated through GOMs.No.16 afore-stated. By the said GO, consolidated guidelines were issued in respect of voluntary retirement scheme (VRS) to the employees of PSUs/Cooperative institutions and other State undertakings. Clause 4 of the said GO insofar as it is relevant reads as under:

> Eligibility: An employee who has been identified by the management to be brought under the VRS can opt for the scheme within the prescribed time. If any employee who has been identified by the management to be brought under VRS does not opt for VRS, he/she will be retrenched under the staff regulations/ID Act.

The main grievance of both the petitioners as stated in the first writ petition is that they were threatened with termination of their services in accordance with the provisions of the Industrial Disputes Act/Service Rules of the Corporation in the event of their failure to voluntarily opt for voluntary retirement under the VRS, before 10.01.2003, and that in that view of the matter the provision in the said clause of the said GO is unreasonable and is fundamentally against VRS as it not only lacks voluntary element but also coerces the employees to get out of service. It is also contended that though a writ petition filed by one C. Chandrababu, Manager, AE, was dismissed, he is being continued in service and that he is working at Head Office as Manager, AE, and that said fact indicates that there is shortage and requirement of staff and hence, the petitioners can be continued in service.

12.1 Learned counsel, *Sri Meherchand Nori*, while reiterating the pleaded case of the Corporation contended, as follows: 'The VRS phases are approved and upheld by a judgment of a Division Bench of this Court in W.A.nos.703 & 801 of 1999. The petitioners are continuing in services by obtaining various orders in the earlier writ petitions. Now, all the earlier writ petitions are disposed of. A copy of the common order, dated 25.07.2005, passed in the earlier writ petitions viz., W.P Nos.28049 of 1995, 552 of 1998, 2314 of 1998, 14839 of 2001 and 14840 of 2001 is placed on record. The said writ petitions were disposed of following the order, dated 23.06.2005, passed in W.P.no.15960 of 1995. Therefore, the present writ petitions are ripe for hearing & disposal. The contentions raised in these writ petitions are no longer *res integra* in view of the earlier orders/judgments of this Court. The posts are abolished. The persons holding the abolished posts were offered VRS in view of the Humane Exit policy instead of directly retrenching in accordance with the service regulations/provisions of the I.D Act. Once posts are abolished, the persons who held those posts cannot seek

Mandamus directing to fill up any post by appointing them in such posts, if any, available or newly created. In that regard, the Corporation has to make a policy decision. Filling up of the post depends upon requirement, qualifications requisite for the post including experience and other factors. It is settled law that it is for the employer to examine and evaluate such issues. The contentions raised are devoid of merit in view of the settled legal position. Hence the writ petitions are liable to be dismissed.'

12.2 He placed reliance on the following reported & un-reported decisions.

(i) B.Rehelamma and others v. A.P. State Ago Industries Development Corporation Limited, Hyderabad and others [4]

(ii) Bandugula Kishan and another v. Managing Director and Vice-Chairman, A.P. State Agro Industries Development Corporation Ltd., Hyderabad and another[5]

(iii) The A.P. State Agro Industries Development Corporation Ltd. V. P.S.S.Ravi Kumar and another[6]

(iv) K.B.Jagan Mohan v. State of Andhra Pradesh rep. by its Secretary, Agriculture and Cooperation Department, Hyderabad[7]

(v) Saripalli Lakshmi Kumar Reddy and others v. A.P. State Agro Industries rep. by Vice Chairman & Managing Director, Hyderabad[8]

(vi) A.P. State Agro Industries Corporation Employees Union v. A.P. State Agro Industries rep. by its Vice Chairman & Managing Director, Hyderabad[9]

(vii) Saripalli Lakshmi kumar Reddy and others v. A.P. State Agro Industries rep. by Vice Chairman & Managing Director, Hyderabad[10]

(viii) K.B.Jagan Mohan v. A.P. State Agro Industries Development Corporation Limited[11]

[4] 2004 (4) ALD 181
[5] 2006 (2) ALD 210
[6] Writ Appeal no.926 of 2013 & Batch (DB), dated 04.08.2017
[7] WP Nos.7764, 7765, 19505 & 20387 of 2006, dt.19.02.2013
[8] W.P.no.28049 of 1995 & batch, dated 25.07.2005
[9] W.P.no.15960 of 1995, dated 23.06.2005
[10] Review WPMP no.25145 of 2005 in W.P.no.28049 of 1995
[11] Order in SLP (Civil) no.1781 of 2018 on the file of Supreme Court of India, dated 31.01.2018

13. Now it is to be examined as to whether the contentions of the petitioners merit consideration.

14. As is noticeable from the pleadings and the submissions, VRSs were offered in various phases to the employees of the Corporation on three occasions earlier to the IV phase. The VRS scheme was upheld by the judgment, dated 08.06.1999, of the Division Bench of this Court in WA.Nos.703 and 801 of 1999. The IV phase of VRS is also pursuant to a policy decision taken by the Board of Directors of the Corporation in a meeting held for the said purpose to reduce the cadre strength. The same was approved by the Government *vide* their letter, dated 23.11.2002. From the material record and the pleadings of the respondents, it is also discernable that the reduction in the cadre strength of the Corporation was also necessitated on account of weak financial position and oversized staff strength. As per the submissions, in view of the Humane Exit policy of the State & the Corporation, the persons, who held the abolished posts, were offered VRS, instead of directly retrenching under the Service Regulations of the Corporation/ID Act. Under the earlier VRS phases some of the employees opted for voluntary retirement and services of some were terminated/retrenched invoking the terms of the said GO. Under the IV phase of VRS surplus members of staff in each cadre are identified. Under similar circumstances, some of the employees employed with the 3rd respondent/Corporation in different layers of hierarchy filed WP.No.323 of 2003 and batch 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 VRS offered by the Corporation. The very notice, dated 28.12.2002, is also now under challenge in the first writ petition. This Court, in the judgment, dated

08.08.2003, rendered in the above WP.No.323 of 2003 and batch, viz., B. Rehelemma and others v. A.P. State Agro Industries Development Corporation Limited, Hyderabad and others (supra) noted that the guidelines issued by the Corporation in Circular, dated 11.07.1997, for offering VRS to its employees was upheld by a judgment, dated 18.06.1999, in WA.No.703 and 801 of 1999 of a Division Bench of this Court, and held as follows:

> 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.
>
> 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.
>
> 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, where under 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.

15. Further, in a batch of four writ petitions viz., WPNos.30602, 29326, 29327 and 32265 of 1997, filed by two senior marketing officers, the then Marketing Managers, erstwhile senior marketing officers and erstwhile senior officer, who all belong to Scheduled Caste, the challenge was to the action of the Corporation in terminating their services as an economy measure. In the said batch of writ petitions viz., B. Kishan and another v. Managing Director and Vice-Chairman, AP State Agro Industries Development Corporation Ltd., Hyderabad and another (supra), the petitioners therein being members of the said community placed reliance on GOMs.No.121, dated 31.10.1996, whereas the petitioners in the instant writ petitions admittedly do not belong to the said community. In the said writ petitions, it is stated as follows: 'The Corporation introduced VRS for persons who were to be sent out consequent upon its decision to close down the agro-chemicals division.

The petitioners therein were being forced to sign on an unconditional undertaking to opt for VRS. Since the petitioners therein did not intend to take VRS and desired to continue, they had chosen not to exercise their option for VRS. Yet they were informed by the proceedings of the Corporation that if they do not exercise option for VRS by the specified date, it would be construed that they were not interested in exercising unconditional option and that they were prepared for termination or retrenchment.' Thus, the said order asking the petitioners therein to opt for VRS was impugned by stating that the said order is an order of termination. In that matter the issue whether or not the Corporation should recruit personnel for the activity relating to the setting up of Agro Rythu Seva Kendras (ARSKs) came up for consideration and it was held that they are matters in the realm of executive policy and that 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. An issue was also raised that the Corporation engaged the services of P. Sudkhar Reddy, an agricultural engineering graduate and that instead of appointing him and others like him the Corporation could have appointed the petitioners therein. Answering the said issue, it was held that the said issue is one required to be examined by the Corporation and not for the Court to evaluate. While answering the question with regard to procedure adopted for termination/retrenchment of staff or officers, this Court held 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.'

16. Thus, the decisions rendered by this Court in the above batches of writ petitions are a complete answer to the contentions of the writ petitioners and as a sequel it must be held that the writ petitions are devoid of merit and are liable to be dismissed.

17. Dealing further with the relief claimed in the second writ petition filed by the first writ petitioner in WP.No.520 of 2003, it is to be noted that he is challenging the action of the Corporation in filling the regular post of Regional Managers by deputation officers, retired officers and on contract basis without considering the claims of eligible persons working in the 2nd respondent Corporation as illegal and arbitrary. He is also seeking a consequential direction to the respondents 1 & 2 to consider the claim of the petitioner for promotion to the post of Regional Manager. Thus, in this second writ petition, the petitioner claims promotion and appointment to the post of Regional Manager by questioning the action of the Corporation in filling the regular posts of Regional Managers by deputations and with retired officers and on contract basis etcetera.

18. As already noted, in B. Kishan's case (supra), a Division Bench of this Court held to the following effect: - 'The issues whether or not the Corporation should recruit personnel for the activity relating to the setting up of Agro Rythu Seva Kendras (ARSKs) are matters in the realm of executive policy and that 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 petitioners.' The further contentions of the writ petitioners are as

under: 'The Corporation is trying to do away with the services of the petitioners while continuing some others. Consequent upon establishment of ARSKs there is scope for employment. The fact that certain posts are filled up and certain persons are being continued in service indicates that there is shortage of staff. A person whose writ petition was dismissed is being continued in employment. The Corporation is revived.' In reply, *Sri Meherchand Nori*, learned counsel, submitted that all the above contentions are negatived by this Court in its earlier orders passed by a learned Single Judge and learned Division Benches. He further denied the submission that the Corporation is revived. Dealing with these contentions, it is to be noted as follows: - 'Whether after abolition of the post the servant who was holding the post would be offered any employment would be a matter of policy decision as the abolition of the post does not confer on the person holding the abolished post any right to hold the post. Further, offering of employment to such persons depends upon the qualifications, which are required for discharging the functions attached to the available post. The question in regard to qualifications (educational and technical) and the further question whether such persons possess necessary qualifications & experience for offering the available posts are matters not for this Court to evaluate but for the Corporation.' Hence, the claim of the first petitioner as made in the second writ petition deserves no countenance.

19. Further, it is also necessary to note that the Corporation terminated the services of the petitioners in WP.No.7764 of 2006 and 7765 of 2006 and confirmed the earlier terminations from service insofar as the said petitioners in WP.Nos.19505 and 20387 of 2006. While disposing of the said four writ petitions, by an order, dated 19.02.2013,

a learned Single Judge of this Court directed the Corporation to provide appointment to the said four petitioners as Deputy Managers or Regional Managers on par with the existing deputationists such as K. Sri Devi in Agro Rythu Seva Kendras (ARSKs) Division of the Corporation with equivalent pay. Certain other directions were also given in the said orders passed by the learned single Judge. Against the said orders of the learned single Judge, the Corporation filed WA.Nos.926, 935, 937 and 975 of 2013. The said writ appeals were allowed by a Division Bench of this Court recently by its common judgment, dated 14.08.2017, passed in the above writ appeals and a contempt case. In the common judgment in the said writ appeals, this Court made extensive references to the findings and observations in B. Kishan's case supra and held as follows:

> '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.'

Though it is represented that SLP(C).No.001781/2018 and SLP(C).No.1343 of 2018 were filed before the Hon'ble Supreme Court and were registered, it is fairly stated that the delay in filing the said SLPs was condoned but no orders are granted to the petitioners therein.

20. By the decision rendered by a Division Bench of this Court in Irrigation Development Employees Association and others v. Government of A.P and others (supra), a batch of writ appeals and writ petitions were disposed of. The challenge in the said matters *inter alia* was to GOMs.No.50, Public Enterprises (II), Department, dated 15.11.2001, downsizing the strength of employees of AP State Irrigation Development Corporation Limited (State Undertaking). Insofar as policy decision and abolition of posts, it was held thus: -

> It is required to appreciate that reduction of cadre strength had consequently resulted in abolition of posts. We have already noticed that downsizing of the cadre strength in the Corporation is a part of the restructuring process of State Level Public Enterprises in order to improve their performance, minimize public liability and thereby promote and advance public interest. There cannot be any difficulty to hold that the decision of the Government as well as the Corporation is in the nature of policy decision. The policy decision is traceable to the action plan of public enterprises reforms under the A.P. Economic Reforms Project.

One of the questions that fell for consideration in the above said matters was whether the policy decision resulting in abolition of certain posts suffers from any constitutional vice? Answering the said question, it was held that downsizing of the cadre strength resulted in abolition of certain posts and that it does not suffer from constitutional infirmity and accordingly GOMs.No.50 was upheld.

21. Having thus analyzed the facts and considered the settled legal position, which applies on all fours to the facts of the present writ petitions, this Court finds that the contentions of the writ petitioners do not merit consideration.

22. On the above analysis and for the reasons afore-stated, this Court finds that both the writ petitions are devoid of merit and are liable to be dismissed.

23. In the result, both the Writ Petitions are dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

30th November, 2018
RAR/VJL

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