(2003) 06 AP CK 0069

Andhra Pradesh High Court

Case No: Writ Petition No''s. 17944, 17951, 17957, 18009, 18031, 18059, 18113, 18172, 18173, 18180, 18202, 18205, 18210, 18280, 18281, 18327, 18331, 18346, 18349, 18351, 18352, 18363, 18369, 18370, 18371, 18375, 18377, 18378, 18379, 18380, 18382, 18383, 18384, 183

S. Rami Reddy	APPELLANT
Vs	
Vice-Chairman and Managing Director, Andhra Pradesh State Irrigation Development Corporation Limited and Others	RESPONDENT

Date of Decision: June 25, 2003

Acts Referred:

- Andhra Pradesh Industrial Disputes Rules, 1958 - Rule 79
- Companies Act, 1956 - Section 291, 36, 617, 619, 619A
- Constitution of India, 1950 - Article 14, 16, 16(4), 16(4A), 21
- Industrial Disputes Act, 1947 - Section 25G, 25N

Citation: (2003) 4 ALD 609 : (2003) 6 ALT 390

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

Bench: Single Bench

Advocate: J. Ramachandra Rao, for the Appellant; Govt. Pleader for Irrigation, for the Respondent

Final Decision: Dismissed

Judgement

N.V. Ramana, J.

In this batch of 128 writ petitions, the petitioners, who are employed in the Work Charged Establishment and Provincial Establishment of the A.P. State Irrigation Development Corporation (for short ''the Corporation), as Executive Engineers, Deputy Executive Engineers, Work Managers, Assistant Executive Engineers, Assistant Engineers, Work Inspectors, Assistant Geophysicists/Assistant Hydrogeologists, Draftsmen, Electricians, Fitters, Riggers, H.Ms., N.T.Ms., M.Ms.,

P.Os., Drillers, Tracers, Stenographers, Assistant Section Officers, Assistants, Typists, Drivers, Helpers, Cleaners, Lascars, Watchman, etc., are assailing the individual notices issued to them by the respondent-Corporation, identifying them as surplus staff and requiring them to opt for VRS, on a number of grounds.

2. Though a number of grounds have been urged by the learned counsel for the petitioners in support of this batch of writ petitions, they in essence have sought to attack their very identification as surplus, requiring them to opt for VRS. Inasmuch as the issues involved in this batch of writ petitions, are more or less identical, they were heard together and are being disposed of by this common judgment. The basic factual matrix of the matter, except for slight variations, having regard to the nature of appointment, the nature of post held by each of the individual employees, and the nature of work being done by them, is common in all the writ petitions. Therefore, instead of narrating the factual matrix of the matter, as projected in each of the writ petitions, I deem it expedient, to briefly set out the events that led to the identification of the petitioners as surplus, requiring them to opt for VRS.

3. The Government of Andhra Pradesh with a view to explore the irrigation potential in the State through different methods and for the optimum utilization of the available ground water resources, conceived the idea of establishing Andhra Pradesh State Irrigation Development Corporation. With that idea in view, the Corporation was incorporated as a Government Company under the provisions of Section 617 of the Companies Act, 1956, in the year 1974. The Corporation, which is a State Level Public Enterprise (SLPE), is wholly owned by the Government of Andhra Pradesh. The Corporation was chiefly incorporated for carrying out the objects of, namely to survey, investigate, construct, execute and carry out schemes and works of all kinds for the exploitation of irrigation potential in the State and for optimum utilization of available water resources, to create irrigation facility to the upland areas through lift irrigation and ground water schemes on "no loss" and "no profit" basis.

4. As on 31-3-2002, the paid-up share capital of the Corporation stood at Rs. 117.22 crores, the predominant shareholder being the Government of Andhra Pradesh with a shareholding of 99.18%. The Corporation was and is engaged in the digging of bore wells, tube wells, infiltration wells, in addition to taking up lift irrigation schemes for the benefit of small and marginal farmers and other weaker sections of the society. The Corporation, it is stated, had successfully executed 1,094 lift irrigation schemes and 19,138 ground water schemes creating irrigation potential for 7.25 lakh acres of land. Since 1995, it is stated that the Corporation has been incurring losses and has been depending on non-plan grant-in-aid form the Government for sustaining its operations. As on 31-3-2002, the losses of the Corporation stood at Rs. 38-00 crores. The Corporation was availing refinance facilities from NABARD and other Banks, besides receiving subsidies from various agencies like District Rural Development Agency (DRDA), Integrated Tribal

Development Agency (ITDA), A.P. Scheduled Caste Corporation (APSCC) etc. According to the staffing pattern, as sanctioned by the Government, and approved by the Board of Directors of the Corporation, near about 2,541 employees were recruited in various categories by the end of 1995.

5. The capital investments of the Government in various SLPEs and Co-operatives stood at Rs. 4444.00 crores and Rs. 1000.00 crorers respectively. As majority of the SLPEs and Co-operatives were making continued losses, the Government made a deep and detailed analysis of the performance of the SLPEs and Co-operatives, and concluded as follows:

(a) Return on investments made by Government SLPEs is negligible. There is a huge loss of opportunity in terms of revenue that Government could have generated on these investments.

(b) SLPEs are unable to generate sufficient resources for their current operations or expansion of business and are heavily dependant on Government budgetary support, resulting in fiscal imbalance for the Government.

(c) The large extent of outstanding Government Guarantees on the debts raised by the SLPEs, increased Government''s cost of borrowing from the market on account of its lower credit rating. There is also the problem of contingent liability on the budget of the State.

6. The Government feeling that it would not be in a position to pump in precious public funds to sustain the SLPEs., decided to restructure the State Level Public Enterprises, and vide their letter in No. RC/SLPE/95, dated 13-6-1995, appointed a One Man Committee known as "Subramanyam Committee" to suggest recommendations for the restructuring of the SLPEs. The Subramanyam Committee submitted its report to the Government, suggesting several recommendations, including downsizing of the existing staff in the SLPEs to the extent of 50%. The Cabinet Sub-Committee having considered the suggestions recommended by the Subramanyam Committee from all angles, submitted its report to the Government. The Government after having due deliberations, approved the following recommendations with respect to restructuring of the respondent-Corporation:

(a) Extension of time for VRS upto end of November, 1997 to cover the remaining surplus employees so as to reduce the establishment cost to the barest minimum.

(b) All the proposals for write off of assets of the organization may be brought before the Annual General Meeting for its approval.

(c) All schemes executed in future should be self-sufficient and they should meet their own establishment charges, not exceeding 15% of the cost of the works executed.

(d) In future, the Corporation shall concentrate only on the execution of such works where its expertise is available and required.

(e) The Corporation should formulate schemes with a view to exploit potential and viable ground water sources in a big way and not individual wells.

(f) Organize the new beneficiaries into societies so that funds for the execution can be drawn from the beneficiaries as margin money and loans from funding agencies like World Bank, NABARD or Government of India.

(g) The Corporation shall investigate and propose viable schemes for execution. The service cost of such schemes should be recovered from specific project cost.

(h) In future, the share capital shall be released by Government only against specific identified projects. The Corporation shall not own and operate any schemes.

(i) The Corporation has to submit a detailed action plan based on a realistic estimate of funds actually available and the capacity of the Corporation to execute the works on the basis of 15% establishment cost on the works executed.

(j) The Corporation may initiate immediate action to handover the remaining schemes to the Farmers'' Water Users Association.

(k) The Corporation will be further reviewed after six months.

(l) The Government may release the amount towards accumulated subsidy dues to the Corporation as also the budgeted amount for the current year.

(m) The Cabinet Sub-Committee considers that it would not be possible for the Corporation to survive and work without these funds being provided by the Government.

With a view to implement the aforementioned recommendations, the Government constituted a Task Force Committee to identify the surplus posts in different cadres in the Corporation. The Task Force having conducted a detailed study, submitted its report to the Government, identifying 922 surplus posts in different categories and cadres of the Corporation. On the basis of the said report, the Corporation in the year 1997, sought to introduce Voluntary Retirement Scheme (VRS) to its employees in a phased manner. In the first phase, as only 416 employees responded to the VRS, the Corporation moved the Commissioner of Labour u/s 25-N of the Industrial Disputes Act, 1947 (for short ''the ID Act), who accorded permission to the Corporation to retrench 528 employees. In the second phase of VRS, about 205 employees were retrenched, and in the third phase of VRS, about 420 employees were retrenched by the Corporation. It is averred by the petitioners that though the Corporation while implementing the third phase of VRS, in categorical terms stated that it is the last and final VRS, however, the same did not find mention in G.O. Ms. No. 324, dated 28-9-1998, issued by the Government. In all, the Corporation retrenched about 1593 employees under the VRS.

7. On 22-3-2001, the Government issued G.O. Ms. No. 16, communicating consolidated guidelines for implementation of VRS to the identified employees of Public Sector Undertakings/Co-operative Institutions and other State Undertakings, indicating that if the identified employee does not opt for VRS, he/she would be retrenched under the provisions of the Staff Regulations/I.D. Act. The Board of Directors in their 131st meeting held on 7-6-2001 resolved to adopt the said G.O. At the far end of the year 2001, the Government issued G.O. Ms. No. 50, dated 15-11-2001, downsizing the cadre strength of the Corporation from 948 to 404 employees. The validity or otherwise of the said G.O. was unsuccessfully challenged by various Employees Associations before this Court by filing W.P. No. 24646 of 2001, which was dismissed on 4-6-2002. The writ appeal preferred by the Employees Associations thereagainst before a Division Bench of this Court in W.A. No. 1039 of 2002, is pending, and it is stated that no interim orders, staying the operation of the order of the learned single Judge, has been passed therein.

8. While matters stood thus, the respondent-Corporation vide Circular Nos. IDC/MD/ADM/51/S1/ASO1/2002/VRSS/2953, and IDC/MD/ADM/51/S1/ASO1/2002/VRSS/2954, dated 7-9-2002, sought to offer VRS to the identified employees, duly informing the petitioners that as per the cadre strength fixed by the Government in G.O. Ms. No. 50, dated 15-11-2001 in respect of the Corporation, and communicated vide Proc. No. 588, dated 30-4-2002 to the employees, they have become surplus, and if they fail to accept the offer of VRS, the Corporation would initiate action for terminating/retrenching the services of the identified employees as per the procedure laid down in G.O. Ms. No. 16, dated 22-3-2001. Assailing the individual notices offering VRS, the petitioners who have been identified as surplus have filed this batch of writ petitions on the grounds to be recorded infra.

9. Before adverting to the respective submissions made by each of the learned counsel appearing in this batch of writ petitions, it should be noted that the following classes of employees, have been identified as surplus and have been offered VRS by the Corporation:

(a) Employees of erstwhile A.P. State Construction Corporation Ltd.

(b) Employees appointed on compassionate grounds/physically handicap quota.

(c) Employees who have either been promoted or have been permitted to convert from one post to another.

(d) Employees of the Work Charged Establishment and Employees appointed by way of direct recruitment in the Provincial Establishment.

(e) Employees belonging to Scheduled Castes and Scheduled Tribes.

Though the learned counsel for the petitioners made elaborate and wide-ranging submissions in support of their respective cases, they in pith and substance sought

to attack the very identification of the petitioners as surplus, requiring them to opt for VRS.

10. Sri. J. Ramachandra Rao, the learned counsel for the petitioners attacked the identification of the petitioners as surplus on the ground that the identification is unscientific. According to him, before identifying an employee as surplus, seniority list of all the employees working in the organization, from the date of their appointment in the cadre in which they were originally appointed and not with reference to the date of their promotion to the cadre in which they are presently working, should be prepared, and those who rank senior in the seniority list so prepared, should be retained and the rest of the employees offered VRS. Inasmuch as the final outcome of VRS is termination of services of an employee, the learned counsel would submit that the identification of surplus staff should be should be in accordance with the procedure laid down in Section 25-G of the ID Act and Rule 79 of the A.P. Industrial Disputes Rules, 1947, and to sustain this argument, he placed reliance on the judgements in Association of Planter v. I.T. 1962 I LLJ 491, Miss Thressia C. Nidhiyiri Joint Proprietor, Nidhiyiri Estate and Another Vs. Kurian (A.P.), President, Ezhattumugham Rubber Thozhilali Union and Others, Suraj Prakash Bhandari v. Union of India 1986 Lab.I.C. 671, Madan Gopal Garg v. State of Punjab 1995 (71) FLR 651 and Union of India v. C. Jayaprakasan 2002 (3) L.L.N. 95.

11. Sri. A. Suryanarayana Murthy, the learned Senior Counsel would submit that the identification of petitioners as surplus is unscientific, in that it is not based on any guidelines framed either by the Government or the Corporation, and therefore, the impugned notices identifying the petitioners as surplus, is liable to be set aside. The Corporation being a Government Company, according to the learned Senior Counsel, is expected to act fairly and reasonably, and inasmuch the identification of the petitioners as surplus is unilateral without consulting any employee, the same is liable to be set aside, and in support of this contention, he placed reliance on Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, .

12. The identification of surplus staff, according to the learned Senior Counsel, should be in accordance with the known principles of "service jurisprudence" and in the identification of surplus staff, the Corporation ought to have applied the principle of "stepping down". If such principle is applied, the employee who ranks last in the cadre in which he is presently working, will become the senior-most in the cadre to which he would be rolled down, and thus the Corporation would be highly benefited by retaining senior employees with rich experience. To sustain this argument, the learned Senior Counsel pressed into service the judgements of the apex Court in State of Haryana v. Des Raj 1976 (1) SLR 191, Suraj Prakash Bhandari Vs. Union of India (UOI), and Chandra Prakash v. State of U.P. .

13. Before identifying the petitioners as surplus, according to the learned Senior Counsel, the Corporation ought to have issued notice, and as no notice was given to the petitioners before identifying them as surplus, the impugned notices offering VRS to the petitioners, are liable to be quashed and set aside, and in support of this submission he placed reliance on the judgements of the apex Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, and Harbanslal Sahni v. Indian Oil Corporation 2002 (9) SCALE 724.

14. According to the learned Senior Counsel, there is no rationale behind the classification of the employees into "surplus" and "non-surplus", and therefore, the classification is not a valid classification. In support of his submission that classification should be reasonable and in tune with the objects sought to be achieved, he placed reliance on S.B. Patwardhan v. State of Maharashtra 1977 (2) SLR 235 and State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others,

15. Inasmuch as provincialisation of the services of certain employees working in the Work Charged Establishment into the Provincial Establishment, was rejected by the Government, the learned Senior Counsel, submits that the Corporation ought to have first identified such of those employees of the Work Charged Establishment, who continued to work in the Provincial Establishment, as surplus, and in support of his submission that any appointment or regularization made contrary to the rules is invalid, and is liable to be set aside, he placed reliance on the judgements of the apex Court in State of Tamil Nadu and another etc. Vs. E. Paripoornam and others, , State of Orissa and others Vs. Smt. Sukanti Mohapatra and others, and V. Sreenivasa Reddy and others Vs. Govt. of Andhara Pradesh and others, .

16. Inasmuch as the respondent-Corporation is a Government owned Company, the learned Senior Counsel, submits that the employees of the Corporation are also entitled to the protection as is available to Government employees under Article 311 of the Constitution of India, and in support of this submission, he placed reliance on A.L. Kalra v. Project and Equipment Corporation 1984 (2) SLR 446. The Corporation is not only expected to protect the interests of the Scheduled Castes and Scheduled Tribes, but also ensure that adequate representation of such class of employees is maintained even while offering VRS.

17. Inasmuch as the object for which the Corporation was established is still subsisting, the abolition of the posts of Hydro Geologists and Geo-Physicists, according to the learned Senior Counsel, is illegal and arbitrary and sans reason. Since the Corporation does not pay salaries to its employees who are on deputation to other Departments, the learned Senior Counsel, submits that the Corporation, while determining the number of surplus employees, ought to have excluded the employees on deputation, as by reason of such exclusion, the number of employees sought to be identified as surplus, would get reduced.

18. Sri. Nooty Ram Mohan Rao, the learned counsel, would submit inasmuch as the continuance of the Corporation is not in doubt, the Corporation while determining the number of employees to be retained, should have kept in view the objects for which the Corporation was established and not the expenditure that is to be incurred for attaining the objects. There is no rationale behind the reduction of staff. According to the learned counsel, the identification of the petitioners as surplus is unscientific, in that it is not based on any material, except the report of the One Man Committee. In the identification of surplus staff, the Corporation ought to have applied the principle of "roll back" or "stepping down" for by application of such principle, according to the learned counsel, the junior-most employee in the cadre in which he is presently will become senior-most in the cadre to which he would be rolled down. If the said principle is applied, the petitioners would not have been identified as surplus. Most of the petitioners who have been identified as surplus are age barred, and they would not be in a position to secure employment elsewhere if they are forced to accept the VRS.

19. According to the learned counsel, the Corporation being a Government Company, is bound by all the policy decisions taken and orders issued by Government from time to time, including those providing for reservation to Scheduled Castes and Scheduled Tribes. According to him, prejudice is writ large in the identification of surplus employees, in that most of the employees who have been identified as surplus belong to Scheduled Castes and Scheduled Tribes. Inasmuch as the State owned organizations, companies and corporations are bound to recruit persons belonging to Scheduled Castes and Scheduled Tribes, and the right of such persons or employees to hold the posts is constitutionally recognized, the learned counsel submits that the Corporation should have applied the reservation roster in the reverse order in the identification of surplus employees. According to him, the policy of the State should be to mitigate sufferance and not augment it, and in support of this submission, he placed reliance on the judgement of the Supreme Court in Government of A.P. and Others Vs. Bala Musalaiah and Others, .

20. The Corporation while identifying the petitioners as surplus has not taken note of the fact that about ten Executive Engineers would be retiring in the month of October, 2003, and had this fact been taken note of, the petitioners who are employed as Executive Engineers, would not have been identified as surplus, and thus would have continued in the Corporation.

21. The learned counsel would submit that the identified surplus employees should be consigned to the surplus manpower pool of the Government in terms of the extant G.Os. The Government cannot discriminate employees of the Government and the Corporation while extending the benefit of the G.Os., and the identified surplus staff should be accommodated in various Departments of the Government. Inasmuch as the Panchayat Raj and Rural Development Departments vide their

letter dated 2-11-2001 have expressed their willingness to take employees on deputation, the learned counsel would submit that the identified surplus employees should be permitted to go on deputation, but the Corporation has not examined this factor while determining and identifying the surplus staff.

22. Criticizing the observations made by a learned single Judge of this Court in W.P. No. 2477 of 2002 and batch, dated 5-9-2002 to the effect that mandamus is not a recognized source of employment and that the State cannot be compelled to abandon its policy decision, the learned counsel submits that the said observations cannot be treated as ratio decidendi so as to make them applicable and followed in future cases. The policy decisions of the Government, as reflected in the various G.Os., according to the learned counsel, are means to be applied and not to be breached.

23. The learned counsel submits that inasmuch as Assistant Executive Engineers and Assistant Engineers form a compact block, mere conversion from Assistant Engineer to Assistant Executive Engineer, does not mean that the employees who sought conversion from Assistant Engineer to Assistant Executive Engineers, should alone be declared as surplus while retaining their juniors in the category of Assistant Engineers. The decision of the Government, according to the learned counsel, as reflected in G.O. Ms. No. 50, dated 15-11-2001, abolishing intermediary posts in a cadre while retaining higher level and lower level posts, is irrational and not guided by any reason.

24. Sri. Bojja Tarakam, the learned Senior Counsel, would submit that inasmuch as employees belonging to Scheduled Castes and Scheduled Tribes have been appointed in terms of Articles 16(4) and 16(4-A) of the Constitution of India, they cannot be terminated according to the whims and fancies of the management, and the constitutional protection available to such employees, has to be given effect to in letter and spirit. According to him, Article 16(4) of the Constitution of India is not an enabling provision, but is a constitutional right available to employees belonging to Scheduled Castes and Scheduled Tribes, and in support of this submission, he placed reliance on the judgements of the apex Court in T. Devadasan Vs. The Union of India (UOI) and Another, , State of Kerala and Another Vs. N.M. Thomas and Others, and Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., . The Corporation being a creature of the statute, is bound to implement the orders issued by the Government in G.O. Ms. No. 36, dated 25-1-1990 and G.O. Ms. No. 121, dated 31-10-1996 and the administrative instructions issued by the Government of India, in the Ministry of Home Affairs in O.M. No. 1/1/67-CC, dated 30-1-1967, and it is not open for the Corporation to contend that it had not adopted the said orders.

25. G.O. Ms. No. 50, dated 15-11-2001, whereunder the cadre strength of the Corporation was fixed at 404, according to the learned Senior Counsel, does not specify the manner in which the surplus staff is to be identified. While implementing the said G.O., the Corporation, ought to have taken care that adequate

representation of Scheduled Castes and Scheduled Tribes is maintained. According to him, the needs of the Corporation for the future cannot be preset, and there cannot be any permanent yardstick for determining the needs of the Corporation. He would submit that if the Corporation takes up new works, it would require more hands and increased manpower. The employees of the Corporation should be treated on par with the employees working in other Departments of the Government, and they cannot be discriminated. Inasmuch as the petitioners were appointed through the regular process of selection, having regard to the permanent existence of the Corporation, the learned Senior Counsel would submit that the petitioners cannot be asked to leave the Corporation even before they attained the age of superannuation, except as a disciplinary measure.

26. Sri. Satyam Reddy, the learned counsel appearing on behalf of some of the petitioners adopted the above submissions made by Sri. Bojja Tarakam, in support of his writ petitions.

27. Sri. S. Laxma Reddy, the learned counsel, appearing on behalf of certain work charged employees submitted that the concept of ownership is distinct from management. Placing reliance on Sections 36, 291 and 617 of the Companies Act, 1956 (for short ''the Act'') he submits that the principle of good governance applies to the Corporation also. Though majority of the shareholding of the Corporation is held by the Government, according to the learned counsel, it is the Board of Directors in whom the power to take decisions concerning the Corporation is vested. Save the provisions of Sections 619 and 619-A of the Act, all other provisions of the Act are applicable to Government owned Companies. Referring to Section 291 of the Companies Act, 1956, the learned counsel submits that professional management envisages exercise of power by the Board of Directors, which should be in accordance with the provisions of the Act and the Memorandum of Association of the Corporation. The Board of Directors are not bound by any directions of the Government if they tend to be not in conformity either with the provisions of the Act or the Memorandum of Association of the Corporation. According to him, the Board of Directors alone are empowered to take decisions with respect to implementation of the Memorandum of Association of the Corporation, and the Board of Directors cannot surrender such powers to the Government or abdicate their functions or duties. Though the State Government is empowered to issue directions to the Corporation under Article 90 of the Articles of Association of the Corporation, it cannot make any directions, which run counter to the objects of the Memorandum of Association of the Corporation. In support of this submission, the learned counsel, placed reliance on the judgements of the Supreme Court in Dr. A. Lakshmanaswami Mudaliar and Others Vs. Life Insurance Corporation of India and Another, and Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, .

28. According to the learned counsel, since the respondent-Corporation is a State-owned Corporation, and is a "State" within the meaning of Article 12 of the Constitution of India, it is also subjected to the constitutional limitations of equality and fair play in action. In support of this submission, he placed reliance on the judgements of the apex Court in Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another, , Poddar Projects Ltd. (Multi Steels) Vs. The A.P.S.E. Board and Others, and Rakesh Ranjan Verma and others Vs. State of Biha and others, . Inasmuch as right to livelihood comes within the fold of Article 21 of the Constitution of India, the learned counsel submits that the Corporation instead of identifying the petitioners as surplus, ought to have explored alternative avenues, for making the Corporation viable.

29. Sri. Ratna Reddy, the learned counsel, submits that the Corporation was established for exploiting water resources and as it is discharging functions akin to that of the Irrigation Department of the Government, where the Work Charged Establishment is continued, the learned counsel submits that the entire Work Charged Establishment ought not to have been abolished in the Corporation. According to him, as the Corporation is not inclined to continue the petitioners in service, the Government should atleast consider them for appointment as Panchayat Secretaries, in terms of G.O. Ms. No. 24, dated 9-1-2002, issued by them. Referring to the provisions in G.O. Ms. No. 324, dated 28-9-1998, the learned counsel, submitted that there is no element of voluntariness in the VRS, in that it threatens the identified employees of termination/retrenchment of their services in accordance with the Service Regulations/ID Act, if they do not accept the VRS offered.

30. Sri. V.S.R. Anjaneyulu, the learned counsel, submits that the principal object with which the Corporation was established is to function on the basis of "no profit no loss". According to him, there is no element of voluntariness in the VRS offered by the Corporation to the identified surplus employees, in that it threatens the identified surplus employee of termination/retrenchment, in accordance with the Staff Regulations/ID Act, if he does not accept the offer of VRS. The method and manner in which an employee has to be identified has not been spelt out, and there are no guidelines prepared either by the Government or the Corporation, for identifying the surplus staff.

31. According to the learned counsel, Clause 8 of G.O. Ms. No. 16, dated 22-3-2001, which requires the identified employee to give an undertaking to the effect that he would not seek re-employment in other Government undertakings, is arbitrary and illegal for it violates the provisions of Articles 16 and 21 of the Constitution of India, and in support of this submission, he placed reliance on the judgement of the Gauhati High Court reported in Oil India Ltd. v. Dilip Kumar Goswami, 1999 (7) SLR 494.

32. The judgement of the learned single Judge of this Court in W.P. No. 2477 of 2002 and batch, dated 5-9-2002, which was upheld by a Division Bench of this Court in W.A. Nos. 145 and 152 of 2002 vide judgement dated 10-3-2003, is not applicable inasmuch as the learned single Judge has not considered the aspect of future employment. No exercise has been carried out by the Corporation while determining the employees sought to be retained and the employees identified as surplus, and mere seniority in each cadre was followed, which according to the learned counsel, runs contrary to the policy of VRS.

33. The learned counsel submits that as his clients are willing to work in lower cadre posts, the principle of "stepping down" should be applied in the identification of surplus staff. By application of such principle, not only the petitioners who are seniors would be retained, but the principal objects of the VRS, which is to attain optimum utilization, meaning thereby rich experience, would be available to the Corporation. There is no proper distinction made between Assistant Section Officers and Assistants, while identifying the surplus staff.

34. Sri. Sastry, the learned counsel appearing on behalf of the employees who have been appointed on compassionate grounds and identified as surplus, drew my attention to their appointment orders, wherein it is stated that the appointment is purely temporary, and submitted that inasmuch as the appointment of the petitioners on compassionate grounds is purely temporary, having regard to the provisions of the eligibility clause in the VRS, which states that VRS is not applicable to temporary employees, he submits that petitioners could not have been identified as surplus and issued the impugned notices offering them VRS.

35. Sri. K.G. Krishna Murthy, appearing on behalf of the erstwhile employees of A.P. State Construction Corporation submitted that the action of the Corporation in seeking to terminate the services of the petitioners if they do not opt for VRS, is contrary to the judgement of the Supreme Court. Referring to certain clauses in G.O. Ms. No. 87, dated 26-3-1993, whereunder the services of the petitioners were regularized, he submits that the petitioners should be continued till they attain the age of superannuation. According to him, no final seniority list has been prepared, and in the preparation of final seniority list, the initial date of appointment and service rendered by the petitioners in erstwhile A.P. State Construction Corporation should also be taken into consideration. He would submit that near about 90% of the employees of erstwhile A.P. State Construction Company were absorbed in various Government Departments, and only 10% of the employees, who constitute the petitioners and some others, were absorbed in State Government Corporations. Only those employees who are engaged in the Corporation, are now sought to be terminated. It is his case that the petitioners could well be adjusted in other Departments of the Government by including them in the surplus manpower pool.

36. According to him, for each Assistant Engineer, the Rules mandate that one Work Inspector should be appointed, and therefore, the ratio of Assistant Engineers and

Work Inspectors should be maintained in the ratio of 1:1. He would submit that certain employees of A.P.S.R.T.C. who were offered VRS have subsequently been appointed as Panchayat Secretaries, and not extending the same benefit to the employees of the Corporation, is discriminatory.

37. According to him, the petitioners were appointed under compassionate grounds, in terms of a policy decision taken by the Government, and therefore, it was not proper for the Corporation to offer VRS to the petitioners by reason of another policy decision taken by the Government to offer VRS to surplus employees.

38. Sri. M.V. Rajaram, the learned counsel would submit that abolition of the posts of Geophysicists is not in tune with the objects for which the Corporation was established, and runs contrary thereto and, is therefore, illegal and arbitrary.

39. Sri. Koka Raghava Rao, the learned counsel appearing on behalf of the petitioners, who are physically handicapped and who have been identified as surplus, submits that the petitioners were appointed having regard to their physical disability under the physically handicapped quota in terms of the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and therefore, they could not have been identified as surplus, and they are entitled to be continued in service till they attain the age of superannuation and cannot be compelled to accept the VRS offered to them by the Corporation.

40. Refuting the allegations made by the petitioners in the writ petitions, the Principal Secretary to the Government in the Public Enterprises Department, has filed common counter on behalf of the respondents.

41. Sri. Ramesh Ranganathan, the learned Additional Advocate General, appearing on behalf of the respondents, while reiterating the averments made by the respondents in the counter-affidavit, inter alia submitted the following:

The Government of Andhra Pradesh in exercise of the powers conferred by Article 90 of the Articles of Association of the Corporation, issued G.O. Ms. No. 50, P.E. - II Department, dated 15-11-2001, downsizing the cadre strength of the respondent-Corporation from 948 to 404 employees keeping in view the following factors:

a) Budget releases during the year 1996-97 till 2001-2002.

b) Corporation should earn its revenue towards establishment charges at the rate of 15% of capital works executed/ budget releases.

c) At the level of 953 employees, establishment expenses per annum would work out to Rs. 13 crores per year.

d) In order to maintain this level of 953 employees, the Corporation would have to execute capital works of at least 86 crores every year (86 crores X 15/100 = 13

crores).

e) As against the capital works required to be executed of 86 crores, in order to maintain 953 employees at pre-revised scales of pay, there is only scope for execution of works for 50 crores per annum.

f) Information available for 6 years from 1996-97 to 2001-2002, indicates that in no year has the budget releases, been anywhere near 86 crores.

g) Assuming that APSIDC would be able to execute works of Rs.65 crores per annum, the establishment cost at 15% thereof was arrived at approx. 10 crores per annum (65 crores X 15/100 = approx. 10 crores).

h) Executing works of even 65 crores is itself difficult as the A.P. Well Scheme (Netherlands Project) was coming to end by March, 2003.

i) After adoption of revised pay scales, within the limit of 10 crores per annum, only the strength at the level of 404 employees could be maintained. (Annexure-I to G.O.Ms.No.50, dated 15.11.2001, gives break up of the cadre strength of 404 employees).

j) The total number of employees to be retained in the Divisions was fixed at 348, in the Head Office i.e., a) finance and administration and b) Engineering = 55 plus one Vice Chairman and Managing Director, constituting a total of 404 employees (i.e., 348 + 55 +1).

k) Various cadres were totally abolished including all categories in the Work charged establishment.

42. The constitutional validity of the said G.O. was upheld by this Court vide its judgement dated 4-6-2002, passed in W.P. No. 24646 of 2001 and batch, and the writ appeal filed thereagainst in W.A. No. 1039 of 2002, is pending before a Division Bench of this Court. Even the guidelines framed by the Government for offering VRS to employees of all Public Sector Undertakings/Co-operative Institutions/other State Undertakings in G.O. Ms. No. 16, dated 22-3-2001, which was adopted by the Board of Directors of the Corporation in their 131st meeting held on 7-6-2001, were upheld by this Court in W.P. No. 2477 of 2002 and batch, dated 5-9-2002, and the writ appeal filed there against in W.A. No. 1039 of 2002, stood dismissed by a judgement of the Division Bench dated 10-3-2003. In that view of the matter, according to the learned Additional Advocate General, the only question that falls for adjudication in this batch of writ petitions, is whether the notice issued to the petitioners offering them VRS, is in accordance with the guidelines issued by the Government in G.O. Ms. No. 16, dated 22-3-2001 or not.

43. The learned Additional Advocate General would submit that the writ petitions, as filed by the petitioners, are pre-mature and liable to be dismissed, and in support of this submission he placed reliance on the judgements of the apex Court in Chanan

Singh Vs. Registrar, Co-op. Societies, Punjab and Others, and Mrs. Kunda S. Kadam Vs. Dr. K.K. Soman and Others, . Further according to him, the issues raised by the petitioners are purely academic in nature, and require no adjudication by this Court at this stage, and in support of this submission, he placed reliance on the judgements of this Court in Andhra Pradesh Power Diploma Engineer''s Association Vs. Andhra Pradesh State Electricity Board and Another, , Govt. of A.P. and another Vs. Medwin Educational Society, Hyd. and others, and V. Devaiah Vs. Superintendent of Police, Karimnagar District, .

44. The learned Additional Advocate General denied the contention of the petitioners that the impugned notices issued to them offering VRS are laced with an element of coercion. According to him, it is open for the identified surplus employees either to accept the VRS or reject it. Inasmuch as the identified surplus employees are being paid monetary benefits, the imposition of condition requiring the employees to give an undertaking that they would not seek re-employment in Government undertakings, according to the learned Additional Advocate General, is valid and suffers from no arbitrariness. At any rate, he submits that the petitioners merely by giving such an undertaking, would not waive their fundamental rights nor can there be any estoppel against the Constitution of India, and in support of this argument, he placed reliance on the judgement of the apex Court in Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, .

45. Inasmuch as the decision taken by the Government in G.O. Ms. No. 50, dated 15-11-2001 to downsize the cadre strength, being a policy matter, by reason of which, the entire Work Charged Establishment and certain posts in the Provincial Establishment, stood abolished, the learned Additional Advocate General, would submit that no interference is called for by this Court in this batch of writ petitions, and in support of this submission, he placed reliance on the judgements of the Supreme Court in M. Ramanatha Pillai Vs. The State of Kerala and Another, and K. Rajendran and Others Vs. State of Tamil Nadu and Others, . Inasmuch as the self-sustenance of the Corporation is dependent on the budgetary support provided by the Government and the centage charges earned on the works executed by it, the learned Additional Advocate General, no direction can be given to the Corporation to continue the petitioners in service. Likewise, he contends that whether or not the Corporation should continue the lift irrigation schemes and whether the finances provided or allocated by the Government for carrying out such schemes are sufficient or not, being matters of economic policy, the learned Additional Advocate General, would submit that no interference is warranted by this Court, and in support of this contention, he relied on the judgements of the apex Court in Union of India and others Vs. Tejram Parashramji Bombhate and others, and Krishnan Kakkanth Vs. Government of Kerala and ohters, .

46. The classification of employees into two categories, namely those sought to be retained in service and those identified as surplus and sought to be offered VRS,

according to the learned Additional Advocate General, is a reasonable classification, and does not violate Article 14 of the Constitution of India. According to him, Article 14 of the Constitution of India, does not insist the classification to be scientifically perfect or logically complete, and the classification would be justified unless it is proved to be patently arbitrary, and to support his contention that the authorities should be allowed some "play in the joints" while making classification or dealing with policy matters, he placed reliance on the judgements in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, and State of Andhra Pradesh and Others Vs. Nallamilli Rami Reddi and Others, . At any rate, he submits that even if the classification results in some hardship to a certain section of the employees, the same need not be interfered with, if on facts and circumstances of the case, it was proved that such classification was necessary, and in support of this contention, he reliance on the judgements of the apex Court in D.C. Bhatia and Others Vs. Union of India (UOI) and Another, and The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others, .

47. The learned Additional Advocate General denied the contention of the petitioners that the Board of Directors of the Corporation have surrendered their power to the Government. The Government was well within its power to direct the Corporation under Article 90 of the Articles of Association to downsize the cadre strength in accordance with G.O. Ms. No. 50, dated 15-11-2001, which the Board of Directors have adopted, and therefore, it cannot be said that neither the Government nor the Board of Directors have acted contrary to the objects of the Corporation nor the Board of Directors could be said to have surrendered their powers to the Government. To support his submission that prohibition or abrogation or surrender of power applies only to the power to be exercised under a statute and not to administrative decisions, the learned Additional Advocate General, placed reliance on the judgement of this Court in VET India Pharmaceuticals Ltd. Vs. Government of Andhra Pradesh and Another, .

48. The learned Additional Advocate General submitted that the Corporation in the identification of surplus employees, has adopted the principle of "last come first go" in each category uniformly, which is in consonance with the provisions of Section 25-G of the Industrial Disputes Act, 1947. He submits that unless the procedure adopted by the Corporation, in the identification of surplus employees is held to be unreasonable, no direction can be given to the Corporation to adopt the alternative methods, as suggested by the petitioners, however largely beneficial they may be. Inasmuch as offering of VRS to surplus employees is pursuant to a policy decision, he submits that no notice is required to be given to the surplus employees before their identification as such, and to sustain this argument, he placed reliance on the judgement of the apex Court in BALCO Employees Union (Regd.) Vs. Union of India and Others, .

49. Inasmuch as the works hitherto undertaken by the Work Charged Establishment were handed over to the beneficiary Committees/Societies, and the Work Charged Establishment left with no work at all, the learned Additional Advocate General, justified the abolishing of Work Charged Establishment in its entirety. Mere continuance of Work Charged Establishment in the Irrigation Department of the Government of A.P., according to the learned Additional Advocate General, does not entitle the petitioners to contend that Work Charged Establishment should be continued in the Corporation also.

50. The learned Additional Advocate General contended that merely because the employees of erstwhile A.P. State Construction Corporation, have been absorbed into service of the Corporation, pursuant to the judgement of the apex Court, they cannot claim any special treatment over other employees of the Corporation, and according to him, reliance placed by the learned counsel for the petitioners on the judgement of the apex Court in G. Govinda Rajulu Vs. Andhra Pradesh State Construction Corporation Limited and Another, , to contend that they are entitled to continue in the service of the respondent-Corporation until they attain the age of superannuation, is erroneous and misplaced. According to the learned Additional Advocate General, G.O. Ms. No. 87, dated 26-3-1993, in terms whereof, the services of the petitioners were absorbed, ordained that the petitioners should take last rank in the category in which they were to be absorbed, and as such, the petitioners ranked lower down in their respective categories.

51. According to him, the employees of the Corporation being not employees of the Government, are not entitled to claim parity with the employees working in Government Departments. In support of this submission, he placed reliance on the judgement of the Madras High Court in Southern Structurals Staff Union v. Management 1994 (81) Comp Cas 389, an unreported judgement of this Court in W.P. No. 13088 of 1995 and batch, dated 16-9-1999, and the judgement of the apex Court in A. Srinath and Others Vs. A.P. State Road Transport Corporation and Others, and Balco Employees Union (Regd.). He thus disputed the contention of the petitioners that they should be adjusted in Government Departments by including them in the surplus manpower pool. Likewise, he contended that employees of the Corporations are not entitled to be appointed as Panchayat Secretaries, for appointment to the said posts is made only from among the various categories of Government employees. He denied the submission of the petitioners that an employee of A.P.S.R.T.C. pursuant to his accepting VRS was appointed as Panchayat Secretary, and submitted that if any such appointment is made, the same is illegal, and in support of his submission that no illegality can be allowed to perpetuate, he placed reliance on the judgement of the apex Court in Chandigarh Administration and another Vs. Jagjit Singh and another, .

52. The learned Additional Advocate General submitted that the employees appointed on compassionate grounds, physically handicap quota and women quota,

cannot claim any special or preferential treatment over other employees of the Corporation having regard to the application of "last come first go" principle universally in each category in the identification of surplus staff. He submitted that there is no rule or provision in the Service Regulations, which provides counting of the length of service rendered by the deceased employee for the purpose of determining the seniority of his dependent appointed on compassionate grounds. As initially every appointment order indicates that the appointment offered is purely temporary, the contention of the petitioners that inasmuch as the scheme of VRS excludes offering VRS to temporary employees, they could not have been offered notices offering VRS, according to the learned Additional Advocate General, is misplaced.

53. According to the learned Additional Advocate General, as the petitioners have sought conversion/promotion long back, they cannot at this distance of time, when it comes to opting for VRS, be permitted to seek reconversion/step down to the feeder posts. Likewise, he contended that the total length of service put in by an employee from the date of his initial appointment in the Corporation for identifying the surplus staff by applying the principle of "last come first go" for offering VRS, is misplaced.

54. Inasmuch as the services of certain employees of the Work Charged Establishment were provincialised by the Board of the Directors, in the Provincial Establishment, about ten years ago, in accordance with G.O. Ms. No. 130, dated 18-3-1981 and G.O. Ms. No. 212, dated 29-3-1979, by making necessary amendments to the Staff Regulations, the learned Additional Advocate General, submits that the contention of the petitioners that their seniority should be refixed by excluding the names of the employees of the Work Charged Establishment, cannot be accepted.

55. Inasmuch as Article 16(4) of the Constitution of India, is only an enabling provision, the learned Additional Advocate General submitted and no mandamus can be issued directing the Government or Government Corporations to provide reservation to the weaker sections, and in support of this submission, he placed reliance on Ajit Singh and Others Vs. The State of Punjab and Others, , Indira Sawhney Vs. Union of India and Others, . According to him, the petitioners placing reliance on Article 16(4) of the Constitution of India, cannot be permitted to contend that in the identification of surplus employees, the Corporation should apply the roster in reverse order, duly protecting the interests of Scheduled Castes and Scheduled Tribes. According to the learned Additional Advocate General, reliance placed by the petitioners on G.O. Ms. No. 36, dated 25-1-1990, G.O. Ms. No. 121, dated 31-10-1996, and the administrative instructions of the Ministry of Home Affairs dated 30-1-1967, in support of the scheme of reservation, and the judgement of the apex Court in Bala Musalaiah in support of their case that roster should be applied in reverse order, is misplaced.

56. According to the learned Additional Advocate General, deputation is as good as transfer, and therefore, it is not open for the petitioners to contend that inasmuch as they are on deputation their names should not have been taken into account by the Corporation, for identification of surplus employees. According to him, the contention of the petitioners that the Corporation ought to have taken note of retirements that would be taking place in the near future, is misplaced.

57. Responding to the contention of the petitioners that the ratio of Assistant Engineers and Work Inspectors is not maintained and certain posts of Geophysicists and Hydrogeologists have completely been abolished, the learned Additional Advocate General submitted that it is a matter of policy, and no interference is called for by this Court. He submitted that as the Assistant Engineers who possessed requisite qualifications were promoted as Assistant Executive Engineers at their request, they cannot now be permitted to contend that persons who were junior to them in the category of Assistant Engineers, cannot be retained.

58. We shall now proceed to consider the various contentions advanced by the learned counsel for the petitioners.

PRELIMINARY OBJECTIONS

59. Before dealing with the various contentions advanced by the learned counsel for the petitioners in support of their respective cases, it would be expedient to deal with the preliminary objection raised by the learned Additional Advocate General that the writ petitions as filed are premature and not maintainable and the various contentions advanced by the counsel for the petitioners are purely academic and require no adjudication. If this preliminary objection raised by the learned Additional Advocate General is to be upheld, then there would be no necessity for this Court to go into the various contentions advanced by the learned counsel for the petitioners.

60. The contention of the learned Additional Advocate General that the writ petitions as filed are premature and not maintainable for the reason that the Corporation having identified the petitioners as surplus, has issued the impugned notices offering them VRS, and it is open for them either to accept or refuse the offer of VRS, and there is no element of threat or coercion in the VRS, has no merit and is liable to be rejected for reasons more than one. Though the VRS offered by the Corporation was upheld by this Court vide its judgement in W.P. No. 2477 of 2002 and batch dated 5-9-2002, which also stood confirmed in W.A. Nos. 145 and 152 of 2002 dated 10-3-2003, yet this Court cannot lose sight of the fact that the Corporation by issuing the impugned notices to the petitioners has specifically identified them as surplus, and offered them VRS, duly informing them that in case they do not accept the VRS, their services would either be terminated in accordance with the Service Regulations or retrenched under the provisions of the ID Act. The tenor of the impugned notice is that the identified employee has to compulsorily accept the VRS, as otherwise, the Corporation would take steps for his/her termination/retrenchment in accordance

with the Staff Regulations/ID Act. Inasmuch as the petitioners, who have been identified as surplus, are required to compulsorily accept the VRS or face termination/retrenchment, their impugning the action of the Corporation in identifying them as surplus, can neither be said to be premature nor the writ petitions as filed by them can be said to be not maintainable, and therefore, reliance placed by the learned Additional Advocate General upon the decisions of the apex Court in Chanan Singh and Kunda S. Kadam, in support of his contention that writ petitions as filed are not maintainable, is misplaced.

61. Inasmuch as the preliminary objection raised by the learned Additional Advocate General, is answered in the negative and against the Corporation, it becomes imperative for this Court to proceed to consider the various contentions urged by the learned counsel for the petitioners in support of their respective writ petitions. In that view of the matter, the other contention advanced by the learned Additional Advocate General that inasmuch as the various submissions made by the learned counsel for the petitioners in respect of their cases, are purely academic in nature, they need not be gone into by this in exercise of its power under Article 226 of the Constitution of India when it is possible to arrive at a decision or dispose of the matter on other grounds, is liable to be rejected, and the reliance placed by the learned Additional Advocate General on the decisions of the Full Bench of this Court in A.P. Power Diploma Engineers'' Association, Medwin Educational Society and V. Devaiah, in that regard, are of no avail to him.

WHETHER CORPORATION WAS REQUIRED TO GIVE NOTICE TO THE PETITIONERS BEFORE THEIR BEING IDENTIFIED AS SURPLUS

62. The next question that arises for consideration is whether the Corporation was required to give notice to the employees before their identification of having become surplus. It may be noted that whole of the Work Charged Establishment as well as certain posts in the Provincial Establishment of the Corporation were abolished by the Government in G.O. Ms. No. 50, dated 15-11-2001 and the writ petitions filed assailing the said G.O. in W.P. No. 24647 of 2001, were dismissed by judgement dated 4-6-2002, and in the writ appeal filed thereagainst in W.A. No. 1039 of 2002, it is admitted by the petitioners that no orders of stay have been granted by this Court. Inasmuch as according to G.O. Ms. No. 50, dated 15-11-2001, the Corporation had to maintain the cadre strength of 404, the Corporation had to resort to identification of surplus staff in accordance with the guidelines framed in G.O. Ms. No. 16, dated 22-3-2001. In the identification of surplus employees, the Corporation has applied the principle of "last come first go" uniformly to all the cadres, and having identified the petitioners by employing such method as surplus, issued the impugned notices offering them VRS. The offer of VRS to the surplus employees, it should be noted, is pursuant to a policy decision taken by the Government, whereunder the whole of the Work charged Establishment and certain posts in the Provincial Establishment, were abolished, and which policy decision was

already upheld by this Court. It is not as if the petitioners are terminated from service as a disciplinary measure. The petitioners pursuant to a policy decision having been identified as surplus are being offered VRS whereunder they would be paid some amounts for the loss of their future employment. Had the petitioners been terminated from service as a disciplinary measure, they would have been justified in contending that they should have been issued notice, but that is not the case on hand. It is well settled that abolition of a post is not a personal injury to the employee, and the loss of employment arising out of such abolition of posts, does not amount to termination or dismissal from service. In this context, it is apposite to call to mind the following observations made by the Supreme Court in M. Ramanatha Pillai Vs. The State of Kerala and Another, :

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

64. In the above view of the matter, the contention of the petitioners that the Corporation ought to have issued notice before identifying them as surplus, cannot be accepted, and is therefore, rejected.

POWER OF THE GOVERNMENT TO DIRECT THE CORPORATION TO REDUCE ITS STAFF STRENGTH

65. The learned counsel for the petitioners contended that though the Corporation is owned by the State Government, and is empowered to give directions to the Corporation under Article 90 of the Articles of Association, yet it cannot direct the Board of Directors, in whom the power of implementing the Memorandum of Association, is vested, to act in contravention thereto. It is no doubt true that the Government cannot direct the Corporation to act in contravention of the Memorandum of Association and u/s 291 of the Companies Act, 1956, it is only the Board of Directors who are empowered to take decision with respect to implementation of the Memorandum of Association. In the instant case, the Government has not directed the Corporation to act in violation of the Memorandum of Association. The contention of the petitioners that the decision taken by the Government to downsize the staff of the Corporation and the direction given by Government to the Corporation under Article 90 of the Articles of Association to implement the said decision, is not in consonance with the objects of the Memorandum of Association and the Board of Directors are expected not to implement it, for such implementation would amount to their surrendering the power vested in them to the Government, cannot be accepted for the reason that the validity of G.O. Ms. No. 50, dated 15-11-2001, whereunder the cadre strength of

the Corporation was downsized to 404, was upheld by this Court in W.P. No. 24647 of 2001 by its judgement dated 4-6-2002, and in the writ appeal filed thereagainst in W.A. No. 1039 of 2002, it is admitted that no orders of stay have been granted. It may be noticed that this contention was already unsuccessfully canvassed before the learned single Judge of this Court in the above referred writ petition. The learned single Judge having considered this aspect of the matter, approved the cadre strength of 404 fixed in G.O. Ms. No. 50, dated 15-11-2001. Be that as it may, we may now consider the question whether the Government has the power to direct the Corporation under Article 90 of the Articles of Association to down size its staff strength. Article 90 of the Articles of Association, which empowers the Government to issue directions and instructions from time to time reads thus:

Notwithstanding anything contained in any of these articles, the Government may from time to time issue such directives or instructions as they may think fit in regard to the finances and the conduct of the business and affairs of the Company and the Directors shall duly comply with and give effect to such directives or instructions.

66. In particular, the Government will have the following powers. To call any information, approve plans, budgets, foreign collaborations, new business and activity, new projects over and above the limits specified by the Government. Further the following powers/acts are vested only in the Government to approve the staffing pattern, rules for recruitment, promotions, pay scales, allowances and all other payments.

67. From a reading of the above, it becomes clear that the Government has the power to issue directions or instructions as it may think fit in regard to the finances and conduct of business and affairs of the company, which the Board of Directors shall give effect to in letter and spirit. The Government in particular has the power to call for any information, approve plans, budgets, foreign collaborations, new business and activity, new projects over and above the limits specified by the Government. That apart the power to approve the staffing pattern, rules of recruitment, promotions, pay scales, allowances and all other payments, is exclusively vested in the Government. Inasmuch as the power to approve the staffing pattern is exclusively and specifically vested in the Government, any decision taken and direction given by the Government in that regard is binding on the Board of Directors of the Corporation, and the Board of Directors have no other alternative, but to implement the said directive of the Government in letter and spirit. In this view of the matter, the Board of Directors can neither be said to have surrendered their power to the Government nor have acted against the interests of the Corporation.

POLICY DECISION

68. It is well settled law that creation or retention or abolition of posts in a particular cadre or category in an organization, depends upon various factors, namely the

nature of work to be executed, whether the work to be executed is of temporary or permanent nature, whether it requires technical or non-technical manpower, financial viability, budgetary estimates etc., and is essentially a policy matter, falling exclusively within the domain of the administrative authorities, and this Court in exercise of its power under Article 226 of the Constitution of India, does not venture into scrutinizing such policy matters unless it is demonstrated that the policy framed by the administrative authorities is fraught with illegality and unconstitutionality. In this context, a reference may be made to a decision of the Five Judge Bench of the Supreme Court in N. Ramanatha, wherein the Supreme Court after considering the question whether the Government has a right to abolish a post in the service, held thus:

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

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

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

71. In Delhi Science Forum and others Vs. Union of India and another, , the apex Court while dealing with the aspect of policy, held thus:

Polices which have been adopted by the Parliament cannot be tested in Courts of Law. The Courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. There may be views and views, opinions and opinions which may be shared and believed by citizens of the country including the representatives of the people in the Parliament. But that has to be sorted out in the Parliament which has to approve such policies. Courts have their limitations because these issues rest with the policy makers for the nation. No direction can be given or is expected from the Courts unless while implementing such policies, there is violation or infringement of any of the Constitutional or statutory provision. The new Telecom Policy was placed before the Parliament and it shall be deemed that

Parliament has approved the same. Courts cannot review and examine as to whether said policy should have been adopted. Of course, whether there is any legal or Constitutional bar in adopting such policy can certainly be examined by the Court.

72. In Krishnan Kakkanth Vs. Government of Kerala and ohters, the the apex Court while considering the question whether the policy made is in consonance with or violated the provisions of Article 14 of the Constitution of India, it held thus:

To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise or finding out the wisdom in the policy decision of the State Government. It is immaterial if a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, Court should avoid "embarking on uncharted ocean of public policy".

73. In State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., , the apex Court while considering the question whether the policy decision challenged therein violated Article 21 of the Constitution of India, held thus:

Now we revert to the last submission, whether the State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. So far as questioning the validity of governmental policy is concerned, in our view, it is not normally within the domain of any Court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except whether it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.

74. In the above view of the matter, the contention advanced by the learned counsel for the petitioners that inasmuch as the impugned identification has not taken care of the Rules which mandated that for every Assistant Engineer one Work Inspector should be appointed, and likewise, inasmuch as the purpose and the object for which the Corporation has been established is still subsisting, the Corporation could not have abolished the posts of Geo-Physicists and Hydro-Geologists, and the action of the Corporation in abolishing certain intermediary cadre posts, which are compressed between high and low level cadres posts, is illegal and arbitrary, and therefore, the impugned identification of surplus employees, is liable to be set aside, are noted only to be rejected. As held supra, creation, retention or abolition of a post, is a matter of policy and depends upon various factors, including availability of work and economic viability. It is the case of the Corporation that they are not maintaining the lift irrigation schemes and that they have handed over the said schemes to the Beneficiary Committees. That Geo-physicists and Hydro-Geologists were deployed in the execution of lift irrigation schemes, which were being executed under the financial assistance given by Netherlands, which was expected to be closed by 31-3-2002. Inasmuch as the project under which the Geo-physicists were employed, is itself being closed, the Corporation in their wisdom thought it not feasible to continue the Geo-physicists and Hydro-Geologists in the Corporation, and accordingly abolished the posts of Geo-Physicists and Hydro-Geologists, and no exception can be taken to such abolition. Accordingly, no exception can be taken to abolition of certain intermediary cadre posts. Likewise, whether the Corporation ought to have maintained even ratio of Assistant Engineers and Work Inspectors, is again a policy matter, purely within the purview of the administrative authorities, and as held in a catena of decisions, this Court in exercise of its power under Article 226 of the Constitution of India, would be loathe to consider the validity of such policy decisions, which are otherwise vested in the expert administrative authorities, unless it is pointed out that the policy decision is fraught with illegality and unconstitutionality.

VRS SCHEME

75. The contention of the learned counsel for the petitioners that there is no element of voluntariness in the VRS offered by the Corporation to the identified surplus employees inasmuch as the impugned VRS notice threatens the identified employees of termination/retrenchment of their services in accordance with the provisions of the Staff Regulations/ID Act, if they fail to accept the VRS offered, cannot be countenanced. It is to be noted that VRS is introduced by companies and industrial establishments having regard to their unviableness. The employee who accepts the VRS is not only paid the terminal benefits, but is also paid certain amount as ex gratia for leaving the Corporation in the midst of his service and for his future loss of employment. In the instant case, the Corporation having regard to the ground realities, namely its unviability to maintain its existence cadre strength, has introduced VRS and in that direction has offered VRS to the identified surplus

employees, and it is for the identified surplus employees either to accept or reject the offer. There is no compulsion for them to accept the VRS. The impugned VRS notice, it should be noticed, was issued by the Corporation in terms of G.O. Ms. No. 16, dated 22-3-2001, whereunder it framed guidelines for offering VRS to the identified employees. Earlier, some of the employees of FEDCON, who have been issued notices upon being identified as surplus, filed writ petitions challenging the said notices on the grounds similar to the grounds raised in this batch of writ petition. A learned single Judge of this Court in W.P. Nos. 2477 of 2002 and batch, having considered the above contention, which is in consonance with Clause 4 of G.O. Ms. No. 16, dated 22-3-2001, by judgement dated 5-9-2002, rejected the same, holding thus:

This contention on behalf of the petitioners does not commend itself to this Court. G.O. Ms. No. 16, dated 22-3-2001 is in the nature of instructions and guidelines for offering the Voluntary Retirement Scheme, which is extended to the employees of Public Sector Undertakings, Co-operative Institutions and other State Undertakings. Clause 4 merely enunciates the guideline that employees who had been identified for extension of the benefits of Voluntary Retirement Scheme are at liberty to opt for the scheme within the time prescribed. If any such employee does not opt for Voluntary Retirement Scheme, such person will be liable for retrenchment in accordance with the Staff Regulations or provisions of the Industrial Disputes Act, 1947. There is no element of coercion. It is an intimation of the reality of the intrinsic unviability of a public sector undertaking.

76. The effect of the other contention advanced by the learned counsel for the petitioners that the condition in the impugned notice insofar as it mandates the identified employee who opts for VRS to give an undertaking that he shall not be eligible for re-employment in any Government Departments and Public Sector Undertakings, which is in consonance with sub-clause (8) of Clause 8 of G.O. Ms. No. 16, dated 22-3-2001, is arbitrary inasmuch as it takes away their right to livelihood enshrined under Article 21 of the Constitution of India, is also liable to be rejected, inasmuch, the learned single Judge of this Court, having considered this contention, in the above judgement, held thus:

In the considered view of this Court, Clause 8(8) of G.O. Ms. No. 16, dated 22-3-2001 suffers from no infirmity. It does not deprive persons, who have opted for Voluntary Retirement Scheme from competing by way of direct recruitment to any Public Office. It only renders them ineligible for re-employment. In fact, the Voluntary Retirement Scheme envisages extension of considerable financial benefits to persons who opt for such scheme and those benefits are co-related either to the length of service put in or the balance of service left prior to the normal date of retirement. Re-employing of such person, who have already benefited from the Voluntary Retirement Scheme, while leaving to languish the unemployed persons, who have not been either employed or have been retrenched without any such

benefit, might constitute a violation of the equality injunctions of the Constitution of India. On this analysis, I find no infirmity in Clause 8(8) of G.O. Ms. No. 16, dated 22-3-2002.

77. It should be noted that the impugned condition only prohibits the petitioners from taking re-employment in Government Departments/Public Sector Undertakings. They are not precluded from taking employment in private organizations or compete by way of direct recruitment to public offices. The apprehension of the petitioners that if they give an undertaking in terms of Clause 8(8) of G.O. Ms. No. 16, dated 22-3-2001, they would be barred from seeking employment in any organization, is misplaced inasmuch as even if they give such an undertaking, they would not waive their fundamental right to equality enshrined under Article 14 and the other fundamental rights guaranteed under Part III of the Constitution of India. If at any future point of time, the petitioners apply for employment and their cases for employment is rejected on the ground of they having undertook not to claim re-employment, are not entitled to claim employment, then they would be at liberty to assail the same. Be that as it may, it is stated by the learned Additional Advocate General and admitted to by the learned counsel for the petitioners that the writ appeals filed assailing the aforesaid judgement, were also dismissed by a Division Bench of this Court in W.A. Nos. 145 and 152 of 2002 dated 10-3-2003. In that view of the matter, both the contentions fail, and they are accordingly rejected.

REASONABLENESS OF CLASSIFICATION OF EMPLOYEES INTO THOSE SOUGHT TO BE RETAINED AND THOSE IDENTIFIED AS SURPLUS

78. I am unable to agree with the contention of the learned counsel for the petitioners that the classification of employees by the Corporation into two categories, namely those sought to be retained and those identified as surplus, is an unreasonable classification, for the reason that such classification was necessitated to satisfy the objects of G.O. Ms. No. 50, dated 15-11-2001, namely reduction of the cadre strength to 404, the validity of which was already upheld by this Court in W.P. No. 24647 of 2001, dated 4-6-2002, and as admitted by the petitioners no orders of stay have been passed in the writ appeal being W.A. No. 1039 of 2002 filed thereagainst. It may further be noted that by reason of G.O. Ms. No. 50, dated 15-11-2001, not only the posts which the petitioners were holding, but the whole of the Work Charged Establishment and some posts in the Provincial Establishment were abolished. Initially, the Corporation offered VRS to all its 948 employees. But as the response was lukewarm and unenthusiastic, the Corporation had no other alternative, but to resort to the identification of surplus staff in each category by applying the principle of "last come first go" uniformly because the very survival of the Corporation was at risk, as the revenues which it was earning towards establishment charges at the rate of 15% of the capital works executed/budgetary releases, were insufficient to meet its establishment costs. Under such

circumstances, the Corporation was compelled to identify the petitioners as surplus for offering VRS. The identification of surplus staff was undertaken in good faith and has a rational nexus with the objects sought to be achieved by G.O. Ms. No. 50, dated 15-11-2001, namely reduction of staff strength in proportion with the staff strength fixed therein. It is not the case of the petitioners that they have been identified as surplus for extraneous and unjustifiable reasons. Inasmuch as the classification of the employees into two categories, namely those sought to be retained and those identified as surplus, was undertaken to satisfy the objects of G.O. Ms. No. 50, dated 15-11-2001, the identification cannot be termed to be unreasonable or arbitrary.

WHETHER IDENTIFICATION OF SURPLUS STAFF IS SCIENTIFIC OR UNSCIENTIFIC

79. The contention of the learned counsel for the petitioners the identification of the petitioners as surplus is unscientific and not guided by any sound reason, and that had the Corporation applied the alternative methods and procedures, as suggested by them, in the identification of surplus staff, the Corporation, would have benefited in retaining employees having rich experience and merit, has no basis for the reason that it is the specific case of the Corporation that in the identification of surplus staff, it has applied the principle of "last come first go" in each category uniformly, with a view to achieve the desired average age mix to cope with the changing needs. There may be umpteen methods and procedures in the identification of surplus staff and may be if the said alternatives methods and procedures suggested by the petitioners were to be adopted, the Corporation would have been benefited of retaining more experienced and meritorious employees, yet this Court in exercise of its power under Article 226 of the Constitution of India, cannot proceed to consider such a question for they are matters of policy and fall purely within the province of the administrative authorities. In this regard, it would be pertinent to excerpt the following observations made by the apex Court in Narmada Bachao Andolan Vs. Union of India and Others, , wherein it was held:

It is now well settled that the Courts in exercise of their jurisdiction, will not transgress into the field of policy decisions. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the Courts are ill-equipped to adjudicate on a policy decision so undertaken. The Court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and peoples'' fundamental rights are not transgressed upon except to the extent permissible under the Constitution.

80. It is evident from the above that it is neither with the domain of the Courts not the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are out courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or

more scientific or more logical.

81. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change per se be interfered with by the Court.

82. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the Courts to consider the relative merits of different economic policies and consider whether a wiser or better one can be evolved...

83. Inasmuch as the Corporation, have in their wisdom felt that by the application of the principle of "last come first go" in each category uniformly, they would achieve the desirable age mix to cope the changing needs, which is one of the prime objects of the VRS, no exception can be taken to the identification of the petitioners as surplus by the application of the principle of "last come first go" in each category. Therefore, the identification of the petitioners as surplus can neither be said to be unscientific nor guided by any reason.

EMPLOYEES OF ERSTWHILE APSCC

84. The contention of the erstwhile employees of A.P. State Construction Corporation Limited that inasmuch as they have entered into the service of the Corporation pursuant to the directions issued by the Supreme Court in its judgement dated 26-11-1986, they should be continued in the service of the Corporation until they attain the age of superannuation, and therefore, they should not be offered VRS and asked to leave the Corporation in the midst of their service, cannot be accepted and is liable to be rejected for a plethora of reasons.

85. It is pertinent to note that pursuant to the orders of winding up issued by the Government in G.O. Ms. No. 168, dated 1-7-1983, in respect of A.P. State Construction Corporation Limited, its employees, including the petitioners, whose services were sought to be terminated, approached the apex Court, and the apex court vide its judgement dated 26-11-1986 directed that the petitioners shall be continued in service on the same terms and conditions either in the Government Departments/Corporations. In terms thereof, the services of the petitioners were continued in the Corporation. It may be noted that the Government constituted a Committee vide G.O. Ms. No. 250, dated 28-4-1990, to finalize guidelines for absorption of various personnel of the A.P. State Construction Corporation Limited. The said Committee submitted its recommendations. The Government having examined carefully the recommendations of the Committee, issued guidelines in G.O. Ms. No. 87, dated 26-3-1993 for absorption of the employees of the A.P. State

Construction Corporation Limited in various Government Departments/Corporations. It is in terms of the guidelines issued by the Government in this G.O., the services of the petitioners came to be absorbed in the Corporation. It is no doubt true that as per guideline No. 1 of the said G.O., the petitioners were given the benefit of counting of service rendered by them in A.P. State Construction Corporation Limited, as qualifying service for the purpose of retirement and other service benefits, but it should be noted that by reason of the notices impugned in this batch of writ petitions, the Corporation is not retiring the petitioners, but is offering them VRS and it is for them either to accept or reject the offer. As per guideline No. 2 of the said G.O., the petitioners were to take the last rank in the category on the date of absorption into service, duly protecting the inter se seniority of the employees of A.P. State Construction Corporation Limited and as per guideline No. 4 of the said G.O., the service conditions, rules, regulations and other benefits as enjoyed by the respective Corporations, were to be extended to the employees of A.P. State Construction Company Limited. It is not in dispute that the petitioners upon their absorption into the service of the Corporation have become its employees and they are governed by the Rules and Regulations that are applicable to other regular employees of the Corporation. As the petitioners pursuant to their absorption in the service of the Corporation, have become its employees, and having accepted the service conditions, rules, regulations, as applicable to the regular employees of the Corporation, the petitioners cannot be permitted to contend that VRS should not be extended to them, and more so when consequent upon their absorption they became regular employees of the Corporation. As the petitioners having regard to guideline No. 2 of the said G.O., had to take the last rank in the category in which they were working, they came to be easily identified as surplus by application of the principle of "last come first go" in each category, by the Corporation. It is not as if the petitioners alone have been identified as surplus. Along with the petitioners, other regular employees of the Corporation, who ranked lower down in the categories in which they were working, were also identified as surplus and were served with notices offering VRS. Inasmuch as VRS is offered to all the employees of the Corporation, the offering of VRS consequent to their identification as surplus by the application of "last come first go" principle, cannot be said to be illegal or arbitrary. The petitioners having accepted the terms and conditions imposed in the said G.O. for absorption of their services in the Corporation, cannot now turn around and say that they should be continued in the service of the Corporation until they attain the age of superannuation, and more particularly, when the G.O. in categorical stated that from the date of absorption of the petitioners, the service conditions, rules, regulations and other benefits as enjoyed by the employees Corporation, would be made applicable to the petitioners.

86. The contention of the petitioners that unless a final seniority list taking into consideration the service put in by them in A.P. State Construction Corporation Limited, is prepared, the identification of surplus staff ought not to have been done,

also merits no consideration because as per guideline No. 2 of the said G.O., only the inter se seniority among the employees of A.P. Construction Corporation Limited was to be maintained for the purpose of promotion to higher post or category, and not the inter se seniority between the regular employees of the Corporation and the petitioners. Therefore, this contention is recorded only to be negatived.

COMPASSIONATE APPOINTMENTS/PHYSICALLY HANDICAP/WOMEN QUOTA

87. The contention of the petitioners that inasmuch as they have been appointed in terms of a policy decision on compassionate grounds in the later years, they would certainly take last ranks in the respective categories, and by the application of "last come first go" principle in the identification of surplus staff, they would be susceptible to be identified as surplus, and had the Corporation counted the past service put in by the deceased employee, they would have not come within the purview of identified surplus staff, cannot be accepted, and is noted only to be rejected. It should be noted that the length of service of an employee is counted in the category in which he or she is appointed for the purpose of providing all service benefits, including seniority, promotion to higher post as also retrenchment. There is no rule in the Service Regulations of the Corporation or any law in the realm of service jurisprudence, which provides for counting of past service rendered by a deceased employee for the purpose of determining the seniority of his dependent appointed on compassionate grounds. It is the case of the Corporation that they have applied uniformly the principle of "last come first go" in each category in the identification of surplus staff. When such is the stand taken by the Corporation, in the absence of any rule or provision shown by the petitioners either in the Service Regulations of the Corporation or under any law, which provides for counting of past service of the deceased employee for the purpose of determining the seniority of his dependant appointed on compassionate grounds, no exception can be taken to the identification of the petitioners as surplus. The contention advanced on behalf of the petitioners that inasmuch as petitioners are temporary employees, the VRS scheme not having been made applicable to such employees, the petitioners could not have been identified as surplus, is misplaced. If such a contention is to be given any credence, the VRS scheme could not be made applicable to any of the employees working in the Corporation because normally every appointment order indicates that the appointment is purely temporary. In the instant case, the petitioners have put in more than five years of service, and they cannot still be treated as temporary employees, so as not to fall within the framework of the VRS scheme. If such contention is permitted to be advanced, none of the employees, irrespective of the number of years of service put in by them, can be treated as regular employees of the Corporation, thus excluding them from the framework of the VRS scheme, for the simple reason that their appointment orders would read that the appointment is purely temporary.

88. The contention advanced by the learned counsel appearing on behalf of the persons appointed under the Physically Handicap Quota and Women quota that inasmuch as the petitioners have been appointed under special circumstances, namely having regard to the nature of their physical disability and gender, they could not have been identified as surplus and spared from being offered VRS, is liable to be rejected for the reason that VRS scheme is not made applicable only to the petitioners, but is made applicable to all the employees equally irrespective of their appointment under different quotas. The general rule of service jurisprudence is that once a person is appointed in a particular category, his or her length of service shall be counted in that category for the purpose of providing all service benefits, including seniority, promotion to the next higher post, as also retrenchment, the petitioners having accepted the seniority in the cadre in which they are presently working, now when it comes to their identification as surplus, cannot be permitted to claim any preferential treatment over others, and more so when their identification as surplus is based on the application of "last come first go" principle in each category.

CONVERSION/STEPPING DOWN

89. The contention of the petitioners that in the identification of surplus staff, the Corporation should have applied the principle of "rolling back" or "stepping down" in each category in that the junior-most employee in the promoted category would become the senior-most in the feeder category from where the employee was promoted, and thus, the senior-most and rich experienced persons would be spared from being offered VRS and would be available at the disposal of the Corporation for rendering their valuable service, cannot be countenanced for the reason that an employee on promotion to a higher post would lose his lien in the feeder post, and his seniority would be counted afresh in the promoted post, and that apart, the employee having enjoyed the promotion and the benefits flowing therefrom, for a considerable length of time, now when it comes to accepting VRS, cannot be allowed to turn around and say that he should be permitted to roll down or step down from the promoted post or the post in which he is presently working to the feeder post or the post from which he was promoted or originally appointed. If such a course is permitted, the very purpose of VRS scheme, the main object of which is to have a desirable age mix to cope with the changing needs of the Corporation, would be defeated, and persons working in the inferior categories alone would be available for identification as surplus for the purpose of offering VRS. No doubt, the methods and techniques, as suggested by the learned counsel for the petitioners, may be more meritorious than the one adopted by the Corporation in the identification of surplus, and would have helped in retaining more rich and experienced staff, yet having regard to the fact that identification of surplus staff by application of a particular principle being a matter of policy, this Court cannot weigh its pros and cons or merits and demerits of such principle and direct the Corporation to change its course of identification and follow the course or method of identification as

suggested by the petitioners. Such matters being purely within the realm of administrative authorities, they should be left to the discretion and wisdom of the Corporation to choose which particular method and technique they would like to employ in the identification of surplus staff, to achieve and realize their avowed objects. The Corporation having found the principle of "last come first go" more apposite and suitable to achieve its avowed objects, namely reduction of staff with desirable age mix to cope with the changing needs, has applied the said principle in the identification of surplus staff, and no exception can be taken thereto. In that view of the matter, the petitioners having put long years of service, at the time when it comes to offering them VRS, cannot be allowed to contend that they should be allowed to roll back or step down from the promoted post or the post in which they are presently working to the feeder post or to the post in which they were initially appointed.

90. For the very same reasons, as stated supra, on the question of applicability of methodology in the identification of surplus staff, the contention of the learned counsel for the petitioners that the Corporation before declaring the petitioners as surplus, ought to have prepared seniority list, as is envisaged in Section 25-G of the ID Act and Rule 79 of the ID Rules, with reference to the category in which they were initially appointed and not with reference to the category to which they were promoted or are presently working, has no substance to hold, and it is accordingly rejected.

WORK CHARGED ESTABLISHMENT

91. The contention of the petitioners working in Work Charged Establishment that inasmuch as the work that was being executed by the work charged employees is still subsisting, they should have been retained, and not identified as surplus, is liable to be rejected for various reasons. It should be noted that the entire Work Charged Establishment was abolished by reason of the orders issued by the Government in G.O. Ms. No. 50, dated 15-11-2001, and the validity whereof was unsuccessfully challenged in W.P. No. 24647 of 2001, dated 4-6-2002, and it is admitted by the petitioners that no orders of stay have been granted in the appeal being W.A. No. 1039 of 2002 preferred thereagainst. Be that as it is, it is the case of the Corporation that the establishment costs were still disproportionate to the centage charges earned @ 15% on capital works executed. The lift irrigation schemes, which were hitherto maintained by the Corporation, were handed over to the Beneficiary Committiees/Societies for their maintenance. As a result whereof, the remaining work charged employees had no work to do and the Corporation had to pay them salaries without making use of their services. In is in these circumstances, as a matter of policy, the Corporation felt it no longer viable to continue the existing regular employees/work charged employees permanently, and therefore, the Corporation abolished the whole of the Work Charged establishment. Therefore, no exception can be taken to the abolition of the Work Charged

Establishment and the identification of the petitioners working therein, as surplus requiring them to opt VRS.

DEPUTATIONISTS

92. The submission of the petitioners, who are on deputation with various needy Departments/Corporations that inasmuch as they are working in the various needy Departments/Corporations having gone there on deputation, they would not be a financial burden to the Corporation, and therefore, they ought not to have been identified as surplus, cannot be accepted. One cannot dispute the fact that deputation is akin to transfer, and though the employees go on deputation to the needy Departments/Corporations, they still continue to hold lien over the posts in which they were working in the parent Department at the time of their going on deputation to the needy Department/Corporation. It should be noted that generally, the period of deputation will be for fixed periods, and would be extended further on the basis of necessity and requirement of the needy Department/Corporation. Once the period of deputation comes to an end in the needy Department/Corporation, the employees on deputation, relapse to the parent Department. As long as the petitioners continue to be on deputation, they may not be a financial burden to the Corporation, but once their period of deputation comes to an end in the needy Department/Corporation, they would certainly be a burden to the parent Department, and irrespective of whether the parent Department can provide work to the employee or not, it has to pay him the salary. Inasmuch as the employees who went on deputation to various needy Departments/Corporations, are very much the employees of the parent Department, the Corporation, which could not visualize whether the period of deputation of the petitioners on coming to an end in the needy Departments/Corporations, would be extended or not, has rightly considered their names also for the purpose of identifying the surplus staff, in each category by the application of "last come first go" principle, and no fault can be found with such action of the Corporation.

FUTURE RETIREMENTS

93. The contention of the petitioners that while identifying the petitioners as surplus, the Corporation has lost sight of the fact that about ten Executive Engineers would be retiring in the month of October, 2003, and had these retirements been accounted for arriving at the cadre strength of 404, some more Executive Engineers would have been retained, cannot be countenanced because if such contention of the petitioners is accepted, it will give rise to similar such unending demands from various other category of employees, and the very purpose of identifying the surplus staff, which is based on the principle of "last come first go" in each category, to satisfy the cadre strength approved by the Government in G.O. Ms. No. 50, dated 15-11-2001, would be defeated.

SURPLUS POOL/PANCHAYAT SECRETARIES

94. The contention of the petitioners that the identified surplus staff should not be offered VRS, but should be consigned to the surplus pool of the Government, so that their services can be well utilized by the Government by deploying them at needy places, cannot be accepted and is liable to be rejected. It is to be noted that though the Corporation is wholly owned by the Government of Andhra Pradesh, yet it has an identity of its own and is distinct from the Government. Merely because the Corporation is owned by the Government, it does not mean that it is a State Government. As employees of the Corporation are not Government employees, they cannot seek the benefits that are conferred upon Government employees. Therefore, the petitioners cannot be permitted to plead that they should be consigned to surplus manpower pool and direct the Government to deploy them in various needy Departments of the Government/Corporations, as is being done in the case of other surplus employees of the Government. That apart, the Government enacted A.P. Prohibition of Absorption of Employees of State Public Sector Undertakings into Public Service Act, 1997, prohibiting engagement or absorption of persons of Public Sector Undertakings into public service. By reason of such an enactment, there is an embargo placed on the absorption of employees belonging to Public Sector Undertakings into services of the Government. In view of this prohibition, the other contention of the petitioners that they should at least be appointed as Panchayat Secretaries in the Panchayat Raj Department, as is envisaged in G.O. Ms. No. 24, dated 9-1-2002, also cannot be accepted, and more particularly when the said G.O. is only made applicable to Government employees and not to the employees working in the Corporations owned by the State Government. In that view of the matter, even if any employee of the A.P.S.R.T.C. consequent upon his opting VRS is appointed as Panchayat Secretaries, the same would be illegal and contrary to the G.Os., and no direction can be issued to the Government to appoint the petitioners as Panchayat Secretaries and perpetuate the alleged illegality.

OTHER CONTENTIONS

95. The contention of the petitioners, who are working as Assistant Executive Engineers, that inasmuch as Assistant Executive Engineers and Assistant Engineers form a compact block, they ought not to have been identified as surplus while retaining the Assistant Engineers, who are much junior to them, is misplaced and cannot be accepted for the reason that Assistant Executive Engineers and Assistant Engineers are two separate categories. The qualifications and the pay scale attached to the two posts is entirely different. While for holding the post of Assistant Executive Engineer, a degree in Engineering is required, while for holding the post of Assistant Engineer, a diploma in Engineering is sufficient. That apart, the pay scale attached to the post of Assistant Executive Engineer, is higher when compared to the pay scale attached to the post of Assistant Engineer, which carries a lower pay scale. The Assistant Engineers who possessed degree in Engineering were permitted to convert into Assistant Executive Engineers. The petitioners having enjoyed the

promotional post for a long time, now when it comes to offering them VRS, cannot be allowed to contend that inasmuch as their juniors in the cadre of Assistant Engineers are being continued, they should also be allowed to continue. Therefore, this contention fails, and it is accordingly rejected.

96. The contention of the petitioners that inasmuch as the provincialisation of the services of the some of the employees working in the Work Charged Establishment was rejected by the Government, their continuance in the Provincial Establishment is illegal, and therefore, unless their seniority is refixed by omitting the employees who have been promoted from the Work Charged Establishment to the cadres in Provincial Establishment, they ought not to have been identified as surplus, is not worthy of acceptance for the reason that it is the specific case of the Corporation that the employees in the Work Charged Establishment who possessed requisite qualifications were given promotions to the cadres in the Provincial Establishment with the approval of the Board of Directors in accordance with the Staff Regulations of the Corporation. It is further their case that the Government issued G.O. Ms. No. 130, dated 18-3-1981 for treating the employees in the Work Charged Establishment who completed ten years of service as Government Employees. The said G.O., is an extension of G.O. Ms. No. 212, dated 29-3-1979, whereunder the work charged employees who completed ten years were extended the benefits, like, leave, pension etc. on par with other Government employees. Inasmuch as both these G.Os. were applicable to the Work Charged Establishment, the Board of Directors, decided to adopted the same, and having adopted the said G.Os., promoted the employees of the Work Charged Establishment to the cadres in the Provincial Establishment, and accordingly incorporated necessary Rules in the Staff Regulations. Inasmuch as the conversion from the post of Assistant Engineer to the post of Assistant Executive Engineer and from the post of Typist to the post of Assistant was given at the request of the petitioners, and was made in accordance with the G.Os., adopted by the Board of Directors of the respondent-Corporation, the contention of the petitioners that they should be permitted to seek reversion from the post of Assistant Executive Engineer to the post of Assistant Engineer and from the post of Assistant to the post of Typist, and their seniority refixed, cannot be accepted, and more so when the petitioners have accepted the benefit conferred by the Staff Regulations, all these years.

WHETHER ROSTER SHOULD BE APPLIED BACKWARDS WHILE IDENTIFYING SURPLUS S.C. & S.T. EMPLOYEES FOR OFFERING VRS

97. The question that falls for consideration is whether the Corporation in identifying surplus employees to whom VRS is to be offered, is required to apply the roster backwards, thereby ensuring adequate representation to the Scheduled Castes and Scheduled Tribes among the employees retained in the services of the Corporation.

98. The learned counsel for the petitioners submitted that inasmuch as employees belonging to Scheduled Castes and Scheduled Tribes have been appointed in terms of the provisions of Articles 16(4) and 16(4-A) of the Constitution of India, they should be given constitutional protection and they should not be terminated, and in case they are sought to be terminated or retrenched along with other employees, the roster should be applied backwards. In support of their submission that roster should be applied backwards while identifying the surplus employees, they placed reliance on the judgment of the Supreme Court in Balamusalaiah, wherein it was held:

According to us, the principle and policy behind the reservation would be adequately met and would receive constitutional approval if, while retrenching the employees, the roster followed while making appointments is adhered to. To elucidate, if the roster is operated backwards (which we shall call recycled) and if the employee to be retrenched as per normal principle be on a non-reserved point, a reserved category candidate would not be retrenched, even if as per general rule of "last in first out" he would have been required to be retrenched. To state it differently, a reserved category candidate would be retrenched only when on a recycled path, the reserved point is reached. This mode of following roster would adequately protect the reserved category candidates in as much as their percentage in the Service or cadre would remain as it came to be when appointments were made. To explain further, if in the cadre or service reserved category candidates were holding say seven posts and seven persons are required to be retrenched, the reserved category employees would not be retrenched even when they be the last seven as per the seniority list, which would have otherwise happened on following the normal principle. Instead of the seven reserved category candidates being retrenched as per the normal principle, the reserved category candidate on the recycled roster point alone would be retrenched, because of which the percentage of representation of such candidates in the service, as it got reflected in appointments made following the roster would remain unaffected.

99. The contention of the learned Additional Advocate General that inasmuch as the principle of "last come first go" has been applied in each category uniformly, no preferential treatment can be claimed by employees belonging to Scheduled Castes and Scheduled Tribes, as a matter of right and no mandamus can be issued directing the respondent-Corporation to follow the roster backwards while declaring the employees as surplus, cannot be accepted and is liable to be rejected for the reasons to be recorded infra.

100. It is no doubt true, as submitted by the learned Additional Advocate General that Article 16(4) of the Constitution of India is an enabling provision and that no mandamus can be issued either to the State or its instrumentalities to provide for reservation. Admittedly, the Corporation has provided for reservation in appointment to the posts in the Corporation and has been following the roster.

Therefore, even in the case of termination/retrenchment, it should follow a method, which seeks to protect and adequately represents the employees belonging to Scheduled Castes and Scheduled Tribes.

101. The Constitution of India confers special protection to the Scheduled Castes and Scheduled Tribes and gives a mandate to the State to accord favoured treatment to them. Article 16(4) of the Constitution of India enables the State to make provision for the reservation of appointments or posts in favour of any backward class of citizens, which, in the opinion of the State are not adequately represented in the services under the State. Article 16(4-A) of the Constitution of India enables the State to make provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes, which in the opinion of the State are not adequately represented in the services under the State. Article 46 of the Constitution of India enjoins upon the State to promote with special care, the educational and economic interests of the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and exploitation. Article 335 of the Constitution of India provides that the claims of the members of the Scheduled Castes and Scheduled Tribes to the services and posts in the Union and the States shall be taken into consideration. Article 338 of the Constitution of India provides for appointment by the President of a Special Officer for the Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for them under the Constitution. Article 341 of the Constitution of India enables the President, by public notification, to specify castes, races or tribes which shall be deemed to be Scheduled Castes in the States and Union Territories. Article 342 of the Constitution of India contains a similar provision for the Scheduled Tribes.

102. Reservation, in the service of the Union and the States, is provided in favour of Scheduled Castes and Scheduled Tribes, with a view to secure their adequate representation. The principal aim of Articles 14 and 16 of the Constitution of India is equality and equality of opportunity; Clause (4) of Article 16 of the Constitution of India, is a special provision and is a means for achieving the very same objective. If equality of opportunity, in employment is to be given to the members of the Scheduled Castes and Scheduled Tribes, their social, educational and economic environment has to be taken note of. Cultural and material suppression has, over the ages, affected their growth and their social conditions are steeped in poverty and squalor. Had the Constitution of India, not given them the desired protection, they would have continued to remain "the most backward of backwards" in the society. Equality, in letter and spirit, can be achieved only by upliftment of the Scheduled Castes and Scheduled Tribes to a certain level where they can compete and be on par with the other sections of the society educationally, economically and socially. In N.M. Thomas, the apex Court, speaking through K.K. Mathew, J, held as follows:

103. The ultimate reasons for the demand of equality for the members of backward classes is a moral perspective which affirms the intrinsic value of all human beings and calls for a society which provides those conditions of life which men need for development of their varying capacities. It is an assertion of human equality in the sense that it manifests an equal concern for the well being of all men. On the one hand it involves a demand for the removal of those obstacles and impediments, which stand in the way of the development of human capacities, that is, it is a call for the abolition of unjustifiable inequalities. On the other hand, the demand itself gets its sense and moral driving force from the recognition that "the poorest he that is in England hath a life to live as the greatest he" (John Rees: Equality)".

104. 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 the judgment, if deemed necessary by it, the apex Court in no uncertain and categorical terms held, that the principle and policy 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 Balamusaliah, 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.

105. In the above view of the matter, I am of the considered opinion that the Corporation should re-examine the matter and consider the feasibility of applying the reservation roster backwards in respect of employees belonging to Scheduled Castes and Scheduled Tribes in identification of surplus employees to whom VRS is to be offered, for by application of the roster backwards, the policy and rationale behind extending reservation to the backward sections of the society, would be adequately met and would receive the constitutional approval of providing adequate representation to the Scheduled Castes and Tribes in the service of the Corporation.

106. In the result, and for the foregoing reasons, except the writ petitions filed by employees belonging to Scheduled Castes and Scheduled Tribes and their Associations, all other writ petitions stand dismissed.

107. Insofar as the writ petitions, namely W.P. Nos. 18172, 18173, 18210, 18401, 18477, 18483, 18532, 18543, 18636, 18638, 18709 and 19178 of 2002, filed by employees belonging to Scheduled Castes and Scheduled Tribes are concerned, they are disposed of with the following directions:

108. The Corporation is directed to re-examine the matter and consider the feasibility of applying the roster backwards in respect of employees belonging to Scheduled Castes and Scheduled Tribes, in identifying the surplus employees to whom VRS is to be offered.

109. Except in the case of the aforementioned twelve writ petitions, filed by the employees belonging to Scheduled Castes and Scheduled Tribes and their Associations, the interim orders passed by this Court in all other writ petitions on different dates, stand vacated in view of the dismissal of the writ petitions. There shall be no order as to costs.