

(1977) 01 CAL CK 0022
In the Calcutta High Court

Himangau Chakraborty

APPELLANT

Vs

L.I.C. and Others

RESPONDENT

Date of Decision : 15-01-1977

Acts Referred:

Constitution of India, 1950 — Article 14, 16
LIFE INSURANCE CORPORATION ACT, 1956 — Section 11, 49

Citation : 81 CWN 672 : (1978) 1 LLJ 71

Hon'ble Judges : T.K. Basu, J

Bench : Single Bench

Judgement

T.K. Basu, J.—This is an application by Himangau Chakraborty and ten others challenging certain notifications issued by the respondents. The application is in a representative capacity and it may be mentioned that, at the time of the issue of the rule nisi, leave was granted by me under Order 1, Rule 8 of the Code of Civil Procedure, 1908.

2. Before I come to the impugned notifications it would be useful to deal with the background of this case

3. As is well-known life insurance business in India was nationalised by virtue of the enactment of the Life Insurance Corporation Act, 1956 (hereinafter referred to as the Act). Prior to the commencement of the Act, life insurance business was in the hands of private institutions whose volume of business varied to a considerable extent.

4. It is in this background that Section 11 of the Act and Sub-section (2) thereof in particular was enacted, Section 11 of the Act in so far as is material for our purpose may be usefully set out hereinbelow:

11(1) Every wholtime employee of an insurer whose controlled business has been transferred to and vested in the Corporation and who was employed by the insurer wholly or mainly in connection with his con-trolled business immediately before the appointed day shall, on and from the appointed day, become an

employee of the Corporation, and shall hold his office therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity and other matters as he would have held the same on the appointed day if this Act had not been passed, and shall continue to do so unless and until his employment in the Corporation is terminated or until his remuneration, terms and conditions are duly altered by the Corporation:

Provided that nothing contained in this sub-section shall apply to any such employee who has, by notice in writing given to the Central Government prior to the appointed day, intimated his intention of not becoming an employee of the Corporation

(2) Where the Central Government is satisfied that for the purpose of securing uniformity in the scales of remuneration and the other terms and conditions of service applicable to employees of insurers whose controlled business has been transferred to, and vested in, the Corporation, it is necessary so to do, or that, in the interests of the Corporation and its policy holders, a reduction in the remuneration payable, or a revision of the other terms and conditions of service applicable, to employees or any class of them is called for, the Central Government may, notwithstanding anything contained in Sub-section (1), or in the Industrial Disputes Act, 1947, or in any other law for the time being in force, or in any award, settlement or agreement for the time being in force, alter (whether by way of reduction or otherwise) the remuneration and the other terms and conditions of service to such extent and in such manner as it thinks fit; and if the alteration is not acceptable to any employees, the Corporation may terminate his employment by giving him compensation equivalent to three months' remuneration unless the contract of service with such employee provides for a shorter notice of termination.

5. The nature and content of the power conferred by Section 11 of the Act will have to be analysed in some detail but I refrain from doing so at this stage.

6. Pursuant to the power conferred on the Central Government by Section 11(2) of the Act an order was promulgated on the 30th December, 1957 known as the Life Insurance Corporation Field Officers' Alteration of Remuneration and Other (Terms and Conditions of Service) Order, 1957 (commonly known as the Blue Order). It is not necessary to discuss the contents of the order in detail. Suffice it to say, that it provided for the duties, scale of pay and allowances, leave, retirement, increments, promotion, penalties, etc., of the Field Officers of the Corporation. It may also be noted that this category of the Field Officers of the Corporation was subsequently redesignated as Development Officers. It is with this category of Development Officers that we are concerned in this application.

7. I may also mention that Section 49 of the Act empowers the Corporation, with the previous approval of the Central Government, to make regulations, inter alia, with regard to the method of recruitment of employees of the Corporation the

terms and conditions of their service, etc. In exercise of this power the Corporation with the previous approval of the Central Government promulgated the Life Insurance Corporation of India (Staff) Regulations, 1960. We are not concerned with the details of this Regulation except to note that Schedule II of these Regulations laid down the scales of pay, Dearness Allowances and other allowances applicable to all the employees of the Corporation from the managing director to the chaprasi.

8. The first order that is the subject, matter of challenge is dated 8th April, 1976 and is known as Life Insurance Corporation Development Officers (Alteration of Remuneration and other Terms of Service) Order, 1976 (hereinafter referred to as the Order).

The preamble to this order is as follows:

Whereas the Central Government is satisfied that in the interest of the Corporation and its policy holders a reduction in the remuneration payable and a revision of the other terms and conditions of service applicable to certain classes of employees of insurers whose controlled business has been transferred to, and vested in, the Corporation, are called for.

Hence, the aforesaid Order was passed.

9. Clause 2(e) of the definition clause defines the "development officer" as "an employee of the Corporation in Class II whose services were transferred to it u/s 11 of the Act"

10. The other two Clauses with which we are concerned in this application are Clauses 4 and 5 which may be set out below:

(4) Fixation of basic pay in the new scales:

(a) The basic pay admissible to a development officer on 1st April, 1976 in the new scale of pay shall be fixed in accordance with the provisions of the Staff Regulations.

(b) Notwithstanding anything contained in sub-paragraph (a) or in paragraph 3, where the amount of basic pay, personal pay, dearness allowances, all other allowances, and non-profit sharing or ex gratia bonus, paid to a development officer for the period of 12 months for which his performance was appraised under the rules of the Corporation immediately prior to the 1st April, 1976 as also the expenses payable or reimbursed to him or incurred by the Corporation on him in respect of travelling residential telephone, insurance premium and taxes on motor vehicles for the said period, was not more than 35 per cent of the eligible premium in that period, he may be given the benefit of the appropriate new scale with effect from the 1st April, 1973.

(5) Re-fixation of basic pay and allowances of a Development Officer on appraisal of his performance, (a) The Corporation shall re-fix the basic pay of each development officer on an appraisal of his business performance during such

period of 12 months as may be specified in the Staff Regulations in that behalf so that the basic pay, dearness allowances, all other allowances, and non-profit sharing or ex gratia bonus which may become payable to him in the succeeding period of 12 months as also the expenses payable or reimbursable to him or may be incurred by the Corporation on him in respect of travelling, residential telephone, insurance premium and taxes on motor vehicles for such succeeding period of 12 months, shall not exceed 20 per cent of the eligible premium in the period of 12 months for which his business performance is so appraised: and if, notwithstanding such re-fixation, his continuance in service is likely to be uneconomical to the Corporation, terminate his service; and such re-fixation and termination shall be regulated by the appropriate provision of the Staff Regulations.

11. Pursuant to the Order mentioned above the Staff Regulations to which I have made a reference, was amended by a Notification dated the 21st April, 1976 called the Life Insurance Corporation of India (Staff). Amendment Regulations, 1976 (hereinafter referred to as the Regulations).

In these Regulations the definition of Development Officer which will be a significant item in the controversy before me is as follows:

"Development Officer" means an employee belonging to Class II and includes existing development officer; In Clause 1(g) "existing development officer" means a development officer in the service of the Corporation on 31st March, 1976;

Thereafter Clause 1(i) lays down a table of "maximum permissible remuneration" in relation to a development officer. The details of the table are unnecessary. Suffice it to say that they are substantially based on the guidelines indicated in the order of the 8th April, 1976. The Regulations as amended also provide for termination of service in certain cases as indicated in the order of the 8th April, 1976.

12. It is this order of the 8th April, 1976 and the notification dated the 21st April, 1976 which are the subject-matter of challenge before me in the present application.

Mr. Arun Prakash Chatterjee, learned advocate for the petitioners submitted that the impugned Order and Notification violated the Constitutional guarantee under Article 16 of the Constitution. Before we proceed further it will be useful to set out the provisions of Article 16 of the Constitution in so far as they are material for our purpose:

16(1). There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

...

As is clear from the material portion of Article 16 of the Constitution, it contains a guarantee of equality similar to that of Article 14 in the matter of employment under the State.

13. The first branch of Mr. Chatterjee's argument was that the impugned Order and notification discriminates between the development officers of the Corporation on the one hand and the other employees of the Corporation on the other. Broadly speaking, Mr. Chatterjee's argument amounted to this that at a time when the Corporation was enjoying an era of prosperity and other groups of employees of the Corporation were enjoying the benefits thereof, the development officers have been singled out for comparatively harsh terms in the matter of pay and other allowances. In support of this contention Mr. Chatterjee referred to a letter of Shri H.K. Sen, a well-known actuary of this City which is annexed to the petition. Reference was also made to various other materials which are on record to show that this category of development officers are being treated more harshly than other groups of employees.

14. It is not necessary for me to examine this contention in greater detail. This is because as contended by Mr. Noni Coomar Chakraborti appearing on behalf of the Corporation and as it seems to me, the development officers form a clearly defined class. It is to be noted that in the Staff Regulations of 1960 the development officers have been placed in Class II of Schedule II of the Regulations. It is further to be noted that apart from the development officers there are no category of employees in that Class II. This, by itself, would not be conclusive of the question as to whether the development officers can reasonably be said to belong to a separate class. I am, however, satisfied on the basis of the various differences pointed out by Mr. Chakraborty in respect of pay, allowances and other emoluments of the different categories of employees of the Corporation that development officers form a clearly defined class. Consequently, this branch of Mr. Chatterjee's argument fails.

15. The next branch of Mr. Chatterjee's argument was that the impugned order discriminated between the development officers inter se. In order to appreciate this contention it is necessary to go back to Section 11(2) of the Act and analyse it a little more closely. According to Mr. Chatterjee Section 11(2) of the Act contains two limbs. The first limb confers power on the Central Government to revise the terms and conditions of service of the employees of Corporation. Its power is, however, confined only to those employees whose services have been transferred to and vested in the Corporation by reasons of the commencement of the Act. The second limb confers power on the Central Government to alter the terms and conditions of the service applicable to all employees of the Corporation irrespective of whether they are transferred employees and are directly recruited after the inception of the Corporation. Strong emphasis is placed on the expression "terms and condition of service applicable to employees of insurers whose controlled business has been transferred to and vested in the Corporation"

and "terms and conditions of service applicable to employees or any class of them". Mr. Chatterjee submits that the latter clause does not contain the expression "such employees" and, therefore, should be construed to confer a power on the Central Government to alter the conditions of service of all employees. Mr. Chatterjee relies on the well-known principle of statutory construction that when the Legislature uses different terms in the same Section it intends to mean different things.

16. In my view, this contention of Mr. Chatterjee is sound and should be accepted. On a plain reading of Section 11(2) of the Act it seems to contain, two distinct and separate powers. The first part relates to the power of the Central Government in relation to "transferred employees" whereas the second part appears to apply to all employees of the Corporation irrespective of whether they are transferred or directly recruited. On the above analysis of Section 11(2) of the Act, Mr. Chatterjee submitted that the impugned order dated 8th April, 1976 was applicable only to the transferred employees. Strong reliance was placed on the definition of "development officers" contained in the impugned order. As I have already set out, development officer in the impugned order means an employee of the Corporation in Class II whose services were transferred to it u/s 11 of the Act. Strong reliance was placed on the affidavit of Harish Chandra Paul on behalf of the Corporation, In paragraph 6 of that affidavit the following statement occurs:

The said order is applicable only to transferred development officers that is to say those officers whose services stood transferred to the L.I.C. u/s 11 of the said Act. The number of such Development Officers now in service is about 1390 whereas the total number of development officers in the L.I.C. is 7698.

17. Mr. D.N. Das, learned advocate appearing on behalf of the Union of India did not seriously dispute the contention that the impugned order applies only to the transferred employees. Indeed in my view no other contention apart from that advanced by Mr. Chatterjee can possibly be correct in view of definition of "development officers" given in the impugned order. To put it differently, the impugned order by virtue to its own definition must be held to be applicable only to the transferred development officers.

18. That being the position, the only other question that remains for determination is whether these transferred development officers at the date when the impugned order came into force can be said to form a distinct and separate class. Mr. Das contended that these transferred employees formed a distinct and separate class and such the question of any discrimination between them and the other development officers who had been directly recruited does not arise. Mr. Noni Coomar Chakraborty, appearing for the Corporation also advanced similar contentions.

19. In my view, the contention of Mr. Chatterjee is sound and should be accepted, No doubt, it can be said that at the time when the Act came into force

and the existing employees of the private insurers became the employees of the Corporation by virtue of Section 11 of the Act, that they formed a different class. This is because there must have been wide discrepancies in the salaries and other emoluments which they were drawing prior to their becoming the employees of the Corporation. It may also legitimately be said that the direct recruits of the Corporation in this category must have had a uniform scale of salary and emoluments and, therefore, formed a different class. But I am of the view that after the passing of the Blue Order of 1957 to which I have already alluded, the wage structure and the other emoluments of the development officers (who were then known as field officers) became fully rationalised. In other words, there ceased to be any discrepancy inter wages and other benefits. This was done, as I have already indicated, in exercise of powers conferred on the Central Government under the first limb of Section 11(2) of the Act. That being so, it must be held that any difference which might have existed prior to the passing of the Blue Order between the salaries and other emoluments of the different categories of field officer as they were then called depending on whether they were transferred or directly recruited totally disappeared. In other words, there was no differentia far less an intelligible differentia between the one category of field officers and the other mentioned above. To put it differently, all the field officers after the passing of the Blue Order formed one class without the possibility of any sub-classification inter se.

20. That being the correct legal position in my view, it is to be decided whether this impugned order which clearly applies to one class of development officers and not to the other can be said to be within the vice of discrimination as contemplated by Article 16 of the Constitution of India. It was not seriously disputed that although the pay scale in the impugned order is somewhat more beneficial to these officers than the previous scales the provisions with regard to revisions of their pay scales in the light of their performance in the previous period of appraisal together with the possibility of the termination of their services in certain contingencies are distinctly more drastic and onerous than those provided for in the Blue Order and the existing Staff Regulations prior to their amendment by the impugned Notification. That being so, it must be held that the impugned order operates more drastically against the transferred development officers. In that view of the matter, I hold that the impugned order contravenes the guarantee of equality in the matter of an employment under the State guaranteed by Article 16 of the Constitution of India. The impugned order dated the 8th April, 1976 must, therefore, be held to be discriminatory and struck down.

21. The same cannot, however, be said, in my view, to be true of the impugned Notification dated the 21st April, 1976. As I have already indicated above this Notification applies to employees belonging to Class II and includes an existing development officer. A controversy was raised whether since the impugned Notification is consequent upon and in implementation of the impugned order, it could cure the vice of unreasonable classification which I have already held is

contained in the impugned order. The impugned notification on its own terms does not differentiate between the transferred development officers and the direct recruits. Consequently, it cannot be said to be in contravention of Article 16 of the Constitution of India. The challenge to the impugned Notification by Mr. Chatterjee on the ground of violation of Article 16 of the Constitution of India, therefore, fails.

22. The next argument of Mr. Chatterjee was that the impugned Order and Notification were passed by the Central Government and the Corporation are violative of principles of natural justice. It is submitted that before they were passed there was no consultation with the persons who were sought to be affected by the said order and the notification. Mr. Chatterjee placed strong reliance of the observations of Wanchoo, J. (as he then was) in the case of *State of Assam and Another Vs. Bharat Kala Bhandar Ltd. and Others*, .

23. In reply to this contention both Mr. D.N. Das and Mr. Noni Coomar Chakraborty cited several decisions including a recent judgment of the Allahabad High Court. My attention was drawn also to the one of the affidavits on behalf of the respondents where it has been stated that the impugned order and notification were issued in partial acceptance of the recommendations of a Committee known as Morarka Committee, This Committee had submitted a report after consultation with all the interests involved including the Corporation and the various unions of its employees.

24. It seems to me that there is a controversy on the factual aspect of this argument, viz., whether the development officers were at any stage consulted through their union or otherwise before the impugned order and the impugned Notification were published. That being the position I do not feel inclined to go into the various authorities cited in detail. In view of my finding on the question of the constitutional invalidity of the impugned order, I do not feel inclined to express any final opinion on this aspect of the argument on natural justice.

25. I, therefore, hold that the impugned order dated the 8th April, 1976 must be held to be contravention of Article 16 of the Constitution of India and must, therefore, be struck down. I further hold that the impugned Notification dated the 21st April, 1976 is *intra vires* and valid.

26. In the result this application succeeds in part and is allowed. The Rule is made absolute to the extent indicated above. There will be a writ in the nature of mandamus directing the respondents to withdraw, cancel and forbear from giving effect to the impugned Order GSR 290(E) dated 8th April, 1976 in any manner whatsoever.

27. There will be no order as to costs.