
(1983) 05 DEL CK 0035

In the Delhi High Court

Case No : Civil Writ Appeal No. 1223 of 1981

Man Singh etc.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-05-1983

Acts Referred:

Citation : (1983) RLR 642

Hon'ble Judges : Prakash Narain, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : P.R. Kumaramanglam, Kailash Vasdev, Shyam Moorjani, R. Sethi and S. Subrarnanyam, for the Appellant;

Judgement

Prakash Narain, J.

(1) As the main plank of the arguments, addressed on behalf of the petitioners, is the decision of the Supreme Court in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, , we may first consider that case. A writ petition u/Art 226 of the Constitution had been filed in the Allahabad High Court challenging a notice dt. 6.5.78 issued by Lic u/s 9A of the Industrial Disputes Act and a notification dt. 26.5.78, issued u/s 11(2) of the Act by the Central Gov. The writ petition was allowed by the High Court resulting in an appeal being filed by Lic in the Supreme Court. Another similar petition was pending in the Calcutta High Court which was transferred to the S.C. Both these matters were disposed of together. The challenge before the Allahabad and the Calcutta High Court, was preferred by Class Iii and Class Iv employees who had contended that the impugned order and notification amounted to changing their conditions of service to their detriment vis-a-vis payment to them of bonus to which they had earlier become entitled through a settlement with L1C made u/s 18 of the Industrial Disputes Act. The appeal was dismissed by majority of 2:1 and the transferred petition was allowed directing issue of a writ to Lic to give effect to the terms of the settlement of 1974 relating to bonus until superseded by a fresh settlement, an industrial award or relevant legislation. Pathak, J. was one of the Hon''ble

Judges Constituting majority. Dealing with the provisions of S. 11(2) of the Act the learned Judge observed that there were two limbs of that provision of law. The first limb conferred power on the Central Govt. to alter the scales of remuneration and other terms and conditions of service applicable to transferred employees. The learned Judge commented, "Predictably when the transferred employees of different insurers were brought together in common employment under the Corporation they would have been enjoying different scales of remuneration and other terms and conditions of service. The power under this part of sub-section (2) is intended for the purpose of securing uniformity among them". With regard to the second limb the learned Judge held that it empowered the Central Govt. to reduce the remuneration payable or revise the other terms and conditions of service but the power had to be exercised when the Central Govt. was satisfied that the interests of the Corporation and its policy- holders required such reduction or revision. Answering the question whether the provision was confined to transferred employees or extends to all employees generally, it was held that the provision was confined to transferred employees, being a part of the scheme enacted in Chapter Iv providing for the transfer of existing life insurance business from the insurers to the LIC. and the attendant concomitants of that process". With regard to the exercise of power u/s 11(2), the learned Judge observed in para 69 :

"ANOTHER point is whether the power under the second limb of sub-section (2) of S. 11(2) can be exercised more than once. Clearly, the answer must be in the affirmative. To effectuate the transfer appropriately and completely it may be necessary to pass through different stages, and at each stage to make a definite order. So long as the complex of orders so made is necessarily linked with the process of transfer and integration, it is immaterial that a succession of orders is made. I am not impressed by the circumstance that the original bill moved in Parliament for amending sub-section (2) of S. 11(2) contained the words "from time to time" and that those words were subsequently deleted when enactment took place. The intent of the legislative provision must be discovered primarily from the legislation itself".

(2) It may be worth noticing that Pathak, J. in terms has laid down, "while the first limb of Section 11(2) provides for securing uniformity among the transferred employees in regard to their scales of remuneration and other terms and conditions of service, the second limb provides that if after such uniformity has been secured, or even in the process of securing such uniformity, the Central Govt. finds that the interests of the Corporation and its policy holders require a reduction in the remuneration payable or revision of the other terms and conditions of service applicable to those employees, it may make an order accordingly". Dealing with the notification dt. 26.5.1978, Pathak, J. had observed, "it is evident from the recital with which it opens that it is intended to apply to transferred employees only. It declares explicitly that the Central Govt. is satisfied that a revision of the terms and conditions of service of the transferred employees is considered necessary. However, there is nothing to

show that the amendment is related to the process of transfer and integration". Krishna Iyer, J., the other learned Judge Constituting the majority, observed in the context of nationalisation and taking over of the employees of the erstwhile insurers having different terms and conditions of service and divergent emoluments that, "broad uniformity became a necessity. Thus, the statutory transfer of service from former employers and standardization of scales of remuneration and other conditions of employment had to be and were taken care of by S. 11(2) of the Life Insurance Corporation Act, 1956. The obvious purpose of this provision was to enable the Corporation initially to absorb the motley multitudes from many companies who carried with them varying incidents of service so as to fit them into a fair pattern, regardless of their antecedent contracts of employment or industrial settlements or awards". The learned Judge did not further dilate at any great length on S. 11(2) of the Act but went on to decide the matters in the context of, to put in in his own words "the competing claims for dominance as between the Id Act and the Lic Act in areas of conflict". Therefore, on the issue, as raised before us, it is the observations of Pathak, J. which will have to be relied on, being observations of one of the Hon"ble Judges Constituting the majority. We cannot accept the contention on behalf of the respondents that on the issue of S. 11(2) of the Act we can accept either the view expressed by Pathak, J. or by Koshal, J, (the learned Judge who was in minority).

(3) Now what has Pathak, J. held ? First, that S. 11(2) of the Act has two limbs. Secondly, the provision is meant for transferred employees. Thirdly, orders u/s 11(2), can be passed from time to time (emphasis ours) to bring about either uniformity or to sub-serve the interests of the Lic and its policy-holders. [S. 11(2) is then reproduced].

(4) The contention of petitioners that the Central Govt. cannot issue orders u/s 11(2), of the Act from time to time cannot be accepted. It has been held in D.J. Bahadur's case that the Govt. can issue orders u/s 11(2), from time to time. It may be that the Blue Order, relied upon by the petitioners, was issued under what Pathak, J. has held to be the first limb of S. 11(2). The impugned order u/s 11(2), can well be regarded as having been issued under the second limb of S. 11(2) of the Act. This by itself completely disposes of the argument of the petitioners. No doubt, Pathak, J. in Para 70 of the report does make observations which tend to suggest that the order u/s 11(2), of the Act can only be made for the process of transfer and integration, nonetheless this observation has to be read in the light of what the learned Judge has observed about there being two separate limbs of S. 11(2). In terms it has been held that the Govt. has the right to issue orders u/s 11(2), from time to time.

(5) Apart from this finding, which we give, we are in respectful agreement with the observations in a judgment of the Andhra Pradesh High Court in W.P. Nos. 4555 of 1979 etc. that "Having regard to the amendment of the Act under the Lic (Amendment) Act, 1981, this aspect has become wholly academic, for under the

Amendment Act what was issued as an order u/s 11(2), and as schedule to the said order, has now been declared to be Rules framed by the Central Govt. u/s 48 of the Act and the said Rules have been made operative with effect from 20.6.1979". That the rules can be retrospective cannot be disputed. (See Roshan Lal Tandon Vs. Union of India (UOI),).

(6) Apart from the above legal proposition we are of the view that the impugned order u/s 11(2) of the Act or the impugned regulations, which are *pari materia*, are consistent with the Blue Order and indeed one may say they make the conditions less stringent and assessments etc. more objective. The impugned order and the impugned regulations may, Therefore, be regarded as not only unsatisfactory but as rationalizing the earlier conditions of service without, in any way, being in conflict with the earlier terms and conditions as also making the working of the Blue Order more intelligible and objective. We may compare the various terms in the two orders to show why we take the view that we have taken. We will first read the terms of the Blue Order of 1957. as amended in 1962. Clause 3 lays down the duties of D. O's. Clause 5 gives the pay scales and allowance. [Clause 7 & 10 are then reproduced]. Clause 8 provided that new business bonus may be paid to D.O's in accordance with such scheme as may be framed by L.I.C. from time to time. Clause 9 dealt with promotion of D.O's and, *inter alia*, provided that any D.O. may, with his consent, be appointed to do administrative work as an Assistant or Section "Head on such terms as may be agreed upon between him and the L.I.C.

(7) It will be noticed that Clause 7 postulates appraisal of work when it says that performance of last year would have to be taken into account. There was no automatic increment contemplated. The appraisal was to be done in respect of all the aspects laid down in Clause 7 (2). Sub-clause (3) spoke of adequate standard without defining what was adequate standard. The same is the position regarding sub-clause (4). In Cl- 10 (a) no objective standards are set out. Clause 10 (b) permitted termination without assigning any reason whatsoever.

(8) We now turn to the impugned order u/s 11(2) of the Act. In terms clause (2) says that it shall apply to the class of employees of the L.I.C. known as transferred employees, holding the post of D.O's. The terms and conditions are mentioned in the annexure to this order, as mentioned in clause (4). Turning to the annexure, we find that para 1 (a) defines "annual remuneration". Para 1 (b) fixes the appraisal date. what was vague in the earlier order is now made specific. Para 2 deals with increments. The term now laid down is more beneficial in as much as previously increments could not be claimed as of right. They have now been more or less made automatic as rule says that ordinarily the same shall be granted as a matter of course unless it is a case of exceeding the expense limit which has to be read in the context of appraisal postulated in the impugned order as well as Clause 7 (1) of the Blue order. Previously there was no right to seek review or file an appeal if increment was not granted. Now even that right has been granted. We now come to para 3 of the impugned order.

Comparing it with Clause 5 (c) of the Blue order, which spoke of conveyance allowance, we find whereas previously the conveyance allowance was fixed and was related to the basic pay, now it has been delinked and is made more rational, i.e., on the basis of actual expense incurred. D.O's Officers are not entitled to conveyance allowance but even additional conveyance allowance which was not there before. It may be interesting to note the conveyance allowance that is being paid now from some figures supplied to us by learned counsel for the respondents. That will be evident from a chart that we reproduce..... [It shows that 7 out of 10 got C.A. more than their pay.] Surely, the new terms and conditions cannot be regarded as detrimental to the interests of the petitioners or disadvantageous compared to the terms and conditions regarding conveyance allowance they enjoyed under the Blue Order.

(9) Under Clause 10 of the Blue Order if a D. O's performance was not found satisfactory, apart from the fact that his remuneration could be reduced, his services could be terminated though after giving him a show cause notice. No reason was required to be assigned if Clause 10 (b) was invoked for termination of service provided three months notice thereof had been given. Under clause 5 of the impugned order this aspect has been made much less stringent. Termination is now only in very special contingencies. Indeed, only the remuneration could be reduced for by and large for unsatisfactory performance and that also by giving...an opportunity to conform to the standard of satisfactory...or good performance. Objective tests previously not there have been laid down to judge performance. Appraisal is not left to the whims but to scientific method laid down in the impugned order. The petitioners cannot complain that the terms are now disadvantageous to them when the very mode of assessment, previously without any objective standards, is now crystalised within the frame work of how it is to be done. We may advert to para 8 of the impugned order. The incentives now postulated were not there earlier. Clause 8 of the Blue Order only talks of new business bonus to be given in accordance with the scheme that may be framed by the L.I.C. Para 8 of the impugned order is definitely more advantageous and removes the vagueness of the earlier order. Para 9 of the impugned order cannot be regarded as taking away any of the rights conferred by Clause 9 of the Blue Order. Indeed, Para 9 (2) is definitely more advantageous where penalty of termination of service can be awarded.

(10) The above comparison shows that the apprehensions of the petitioners are not only misplaced but the whole controversy is misconceived. L.I.C. is a national institution. It is to work as an instrumentality to bring about a welfare State. Its employees cannot and should not be doled out largesse at the expense of the nation. It must work on strict business norms. The impugned order cannot be regarded as adversely affecting employees. The incompetent and inefficient employees will, of course, always have a grievance.

(11) The contention, Therefore, of the impugned order being violative of S. 11(2) of the Act has to be negated. We hold accordingly. The impugned Regulations

made u/s 49(2)(bb), are *pari materia* to the impugned order u/s 11(2) of the Act. For the reasons upholding the impugned Order, the Regulations have also to be upheld.

(12) We now proceed to examine the contention regarding the impugned order and Regulation being vocative of S. 40(1) of the Insurance Act. Reliance has been placed on *K.S. Ramaswami V. Union of India* 1977 (1) LL.J. 211. The contention of the petitioners is that if wages are linked with performance, it would be vocative of S. 40 of the Insurance Act. They support this contention by showing grant of increments or reduction in salary is linked to the cost ratio, i.e. expense incurred in relation to first year premiums or business secured. To understand the ratio of the above case, we have to keep in mind that the D.O's are not required to procure business but organise the procuring of business. The incentive bonus, increment on the basis of performance or reduction in wages on assessment keeping in view the cost ratio that is postulated is for good organisation resulting in good business rather than in just procuring new business. In the case relied upon, a learned Judge of the Madras High Court was examining a particular clause of the Regulations of 1976 in the context of Sections 11(2) of the Act. It was urged that the amendment of Staff Regulations which permitted reduction in pay or refusal to grant an increment with reference to volume of business secured was vocative of Article 16 of the Constitution. This argument was negated on a reading of the impugned Regulations. It was further held that when the accent is more on volume of business it is only with a view to get better performance from the D. O's who form a class by themselves. Therefore, the contention that the Regulations which have now been framed or the provision in the impugned order would be vocative of Section 40 of the Insurance Act cannot be accepted as the norms laid down are conducive to better performance and are related to economic working of the system rather than that emoluments of the petitioners are dependent on quantum of business procured. Indeed, as we have said earlier, the reward or otherwise is for good organisation rather than procurement of actual business directly.

(13) Turning now to the fourth contention of the petitioners it will be apparent on a reading of the agreement dt. 19.11.71, relied upon by the petitioners, that there is no clause which says that the Regulations will not apply. With regard to the function of the D. O's, Clause 2 of the agreement spoke of only "fresh scheme of minimum norms for the Development Officers". Clause 3, no doubt, laid down the procedure for dealing with below the minimum norm performance but a comparison of the two would show that the present norms are more objective. We need not examine this agreement clause by clause and rest the issue by holding that even in *D. J. Bahadur's* case it has been held that the agreement will apply till it is superseded by another agreement or settlement or by a valid law. The impugned order, having the force of rules specially after the Amendment Act, is the law contemplated and that is binding.

(14) With regard to all that has been said about the impugned order and the

impugned regulations being vocative of Articles 14 and 16 of the Constitution, we are of the view that the impugned orders and regulations cannot be called arbitrary. The same are not discriminatory because the D.O's are a class by themselves. Being a class by themselves no question of discrimination with another type or category of employees of other nationalised institution arises. They carry on specialised type of work. That some others, like Asst. Branch Managers, may also partly do similar work is neither here nor there. The entire commercial structure of L.I.C. is dependent upon the organisation that D. O's may set up to procure business. They cannot, Therefore, be considered to be similarly placed as others. Further, it is a complete misconception to say that they have ceased to be whole time employees and have become piece- rated employees. The petitioners have failed to put in any cogent material with regard to the duties of Asstt. Branch Managers to show that they do precisely the same work as the petitioners and nothing else. The area-wise classification can also not be called irrational. The Blue Order itself contemplates zones "A", "B", "C" and "D" Zones which have now been contemplated on population basis is one of the modes or basis of providing the zones. L.I.C. could adopt any rational basis. Perhaps per capita income basis could have been adopted but then it is not for us to say which criterion should have been adopted. Unless the population basis is wholly irrational, which we are unable to hold, the impugned order cannot be regarded as irrational or arbitrary. The viability of L.I.C may not be in issue but the fantastic payments that the D.O's get by way of total remuneration, as evidenced by the schedule reproduced earlier, would show that the D. O's should be the last persons to have any cause for complaint. If at all, the policy-holders may have a cause for complaint against the L I.C. in this regard. That Article 43 of the Constitution can be invoked by the petitioners is incomprehensible. Indeed, a policy-holder may well raise a question that they are paid too much.

(15) We need not comment upon the contention that the impugned order or Regulations are vocative of Article 19(1)(f) of the Constitution, as was in force on 19.12.78. No such right is enforceable today. Further, an examination of the data placed before us shows that there is no reduction of wages. Indeed, there is substantial increases in the total wages.

(16) Relying on H.S. Chauhan vs. L.I.C. 1982 Lab. I.C. 1864 and L.I.C. v. D. J. Bahadur Air 1990 S.C. 2181, it is urged that D. O's are workmen within the meaning of Section 2(s) of the Industrial Disputes Act and, Therefore, no action could be taken qua them without first complying with the requirements of Section 9A of the Industrial Disputes Act. The arguments has merely to be noted and rejected. By no stretch of imagination, looking at the duties and functions of D. O's, can they be regarded as workmen. Their wages also belie this. The cases relied upon have no relevance to the facts in the present case. In any case, we have held that the terms and conditions have not been varied to the disadvantage of the D. O's but variation, if any, is to their advantage. Petitions dismissed.