

(1992) 07 MAD CK 0054

In the Madras High Court

Case No : Writ Petition No. 10367 etc. of 1989, 12043 etc. of 1990 etc.

Terminated Full Time Temporary LIC Employees Welfare
Association

APPELLANT

Vs

Senior Divisional Manager L.I.C., Thanjavur

RESPONDENT

Date of Decision : 27-07-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21
Industrial Disputes Act, 1947 — Section 10, 10(2), 10(5), 2, 23
Life Insurance Corporation (Staff) Regulations, 1960 — Regulation 8
Life Insurance Corporation Act, 1981 — Section 25

Citation : (1993) 1 LLJ 1030 : (1992) 2 MLJ 573

Hon'ble Judges : Srinivasan, J;Raju, J;Bakthavatsalam, J

Bench : Full Bench

Advocate : R. Singaravelu and K. Chandra, for the Appellant; M.R. Narayanaswamy, Sanjay Mohan, P. Narasimhan and Meera Gupta, for the Respondent

Judgement

Srinivasan, J.—I. Introduction : By an order of reference dated April 23, 1992, a Division Bench referred seven of the above writ petitions to a larger Bench. The Honourable the Chief Justice constituted this Bench for hearing the cases. The matters were listed for orders on April 30, 1992 and with the consent of counsel, we fixed the date of hearing as June 22, 1992. At the instance of counsel appearing in the other writ petitions, the Honourable the Chief Justice directed those matters also to be posted before us as the questions involved are common. When the matters were heard, 18 writ petitions were posted in all for hearing. In the course of the hearing, it was pointed out that several writ petitions had been filed for similar reliefs by persons in similar position after the Division Bench heard the matters and reserved orders and before it made the order of reference. Counsel had no objection to our passing orders on those writ petitions too, as no further argument was involved. The detailed particulars of all the writ petitions covered by this judgment are set out in the first part of this judgment.

2. II. History : It will be convenient to refer to the facts chronologically before setting out the questions which arise for our consideration. In May, 1985, the Central Government constituted a National Industrial Tribunal presided over by Dr. Justice D. R. Tulpule and referred the following matter for its consideration :

"What should be the wages and other conditions of service of Badli, Temporary and Part time Workmen of the Life Insurance Corporation of India, as well as the conditions in their absorption in their regular cadre ?"

It was taken on file as Reference No. N.T.B. 1 of 1985 under Sec. 10 of the Industrial Disputes Act. Initially, the western Zone Insurance Employees" Association, Bombay and Central Zone National Life Insurance Corporation Employees" Association, Kanpur were alone parties to the references, besides Life Insurance Corporation of India. Subsequently, all the Unions of all the Regions and the Zones in the country were joined as parties and they filed statements putting forth their claims. Thus, the reference covered the entire country. An interim award was passed by the Tribunal in a prayer for restraining the Life Insurance Corporation of India (hereinafter referred to as "the L.I.C. "), from recruiting or absorbing any person without the prior permission of the Tribunal. As per the Interim Award, L.I.C. was restrained from making any new appointment except where persons had to be appointed over and above the then existing vacancies against which the concerned workmen who were working or had worked with the L.I.C. in their capacity as Badlis, Temporary or Part-time workmen and who would be concerned in the reference had to be appointed and that where an employee was appointed from amongst the Badli, Temporary or Part-time workmen against any vacancy, he would have to be continued as long as the vacancy continued, provided an undertaking was given that no benefit would be claimed. If by that circumstances, he continued to be in a position for more than 85 days, it was directed that the workmen concerned shall give an undertaking that they would not claim any benefit on account of such continuation for a period of more than 85 days, if it occurred, for absorption or any other benefit and subject to that he may be continued. Ultimately, the Tribunal passed an award on April 17, 1986. It was held that only those workmen who had worked during the period January 1, 1982 to May 20 1985 (date of reference to the Tribunal) be considered as eligible for absorption and that a workman claiming absorption in a Class III post should have worked for 85 days in a period of two years and a workman claiming absorption in Class IV post should have worked for 70 days in a period of three years. It was held that the calculation of number of days of work should be upto the date of reference. The L.I.C. was directed to appoint a Screening Committee to consider the suitability and desirability of such eligible workmen for absorption. It was further directed that the workmen considered to be suitable and desirable for absorption should be absorbed against vacancies which existed in the L.I.C. as on March 31, 1985 and which may arise subsequently. It was ruled that the L.I.C. should not recruit outsiders in a particular Division till such lists were exhausted.

3. Paragraphs 65 to 67 of the Award read as follows :

"65. In the light of the directions above, with regard to absorption and creation of additional posts by the Corporation, I do not think that there would be any occasion in future for the Corporation to employ workmen in the temporary and badli categories, excepting for the occasional and temporary increase in work which necessitate employment of temporary staff. That temporary staff in all probability would be only amongst Class-III cadre, in which case there would be no occasion and there need not be, I think, any case or situation requiring consideration or grant of any other benefit apart from the wage to such workmen.

66. I hope and expect that in the light of what has been said and the past experience of the Corporation the situation where a large number of such employees come to be engaged without adherence to any formalities or procedures by the various local managements would be completely eliminated and done away with and this kind of employment in the Corporation's history would be the last occasion. Excepting the temporary employment, the Corporation will have no occasion or necessity to employ badli workmen, it is hoped in future. Though part-time employees will continue to be in existence for some more time, as I indicated, the Corporation will also see its own way to absorb the part-time employees in its regular employment as far as possible and reduce the number of part-time employees to the minimum. However, whenever, hereafter any occasion or vacancy arises of regular employment in part-time categories of employment, then those who have worked part-time in accordance with their seniority should be given preference for absorption in the regular cadre of the Corporation's employment. This should be irrespective of the qualifying age for the entry into Corporation's service and qualification, but subject to his being found suitable.

67. I have already indicated that retrospective effect in the circumstances and in the case of this award has to be given from January 1, 1982. The procedure for absorption would also at the same time and simultaneously place in the hands of the Corporation a record of the service which the concerned workmen have rendered during this period. On that basis and in the light of the directions above, and as indicated, the workmen should be paid wages to which they would have been entitled to reduced by the wages which have been actually paid to them. They would not however, be entitled to payment of exgratia bonus for that period."

4. Aggrieved by some of the directions contained in the Award, L.I.C. filed W.P. No. 1801 of 1986 in the High Court of Bombay challenging the same. The writ petition was dismissed on August 14, 1986; but certain clarifications were given by the court. Pursuant thereto, the L.I.C. issued as many as six circulars commencing from September 17, 1986 and ending with February 25, 1987. Disputing the instructions given in the Circulars, the Unions approached the Central Government and a reference was made by the latter under Sec. 36A of the Industrial Disputes Act to a National Industrial Tribunal presided by Justice M.

S. Jamdar. It was taken on file as Reference No. N.T.B. 1 of 1987. The question referred was,

"Could the Award dated April 17, 1986 with special reference to paragraphs 44, 45, 46, 48, 49, 51, 52, 54, 55, 56, 57, 60, 60,64 and 66 and the interim order dated March 14, 1986 be interpreted to mean that the Central Office of the Life Insurance Corporation of India is empowered to issue instructions as contained in their circular issued in this behalf to implement the directions of the Award. If not, what could be the correct interpretation of various directions covered by the said paragraphs in the circumstances of the case ? Whether the term "absorption" referred to at various places in the Award can be interpreted to mean recruitment ?"

5. The Tribunal passed an interim Order directing the L.I.C. not to make any recruitment from the open market during the pendency of the proceeding before it. By order dated August 26, 1988, the Tribunal answered the reference by its Award giving its own interpretation of the earlier Award. The Tribunal held that "absorption" contemplated by the previous Award did not mean "recruitment".

6. Challenging the said Award, L.I.C. filed SLP No. 14906 of 1988 in the Supreme Court of India and obtained Special Leave. A compromise was entered between the L.I.C. and eight of the nine Unions and on the basis of the same, the Supreme Court passed orders on March 1, 1989 pending the final disposal of the appeal. The Supreme Court permitted the L.I.C. and the members of the said eight Unions to implement the terms of compromise by way of interim measure without, however, any prejudice to the rights and contentions of the members of the other Union, who had not entered into such compromise with the Management.

7. It is stated that pursuant to the compromise, the L.I.C. have appointed 1875 persons to posts in Class III and 1324 persons to posts in Class IV in various Divisions. It is not in dispute that the award passed by the National Tribunals and the order of the Supreme Court covered only the persons recruited on temporary basis between January 1st, 1982 and May 20th, 1985. Persons claiming to have been appointed temporarily subsequent to May 20,1985 started filing writ petitions after the order of the Supreme Court referred to above. The writ petitions have been filed through Associations said to have been formed by such temporary employees in each Division. The Association in Thanjavur Division filed W.P. No. 10367 of 1989 praying for issue of mandamus to the Senior Divisional Manager, L.I.C. Thanjavur Division, to give first priority and preference to the members of the petitioner association, numbering 49 in total as shown in the list attached thereto, in filing up the existing 80 vacancies to the posts of Assistants for Mofussil Branch Offices of L.I.C. in Thanjavur Division and to appoint them in the said posts. An interlocutory application was filed for stay of recruitment to the posts of Assistants in 80 vacancies referred to in the writ petition. Though interim stay was granted initially for a period of four weeks, it was vacated ultimately and the interlocutory application was dismissed. The court gave liberty

to L.I.C. to proceed with the recruitment and complete the same, but directed that the same would be subject to the result of the writ petition. That was affirmed by a Division Bench in W.A. No. 751 of 1989 by order dated October 5, 1989.

8. A similar writ petition by an Association in Madras Division was filed in W.P. No. 12199 of 1989 for similar relief. The interlocutory application was dismissed on October 30, 1989 and it was affirmed by a Division Bench on November 30, 1989 in W.P. No. 1012 of 1989.

9. The Association in Coimbatore Division filed W.P. No. 15935 of 1989, but no interim order was passed. An individual by name Chelladurai filed W.P. No. 11828 of 1989 for similar relief as against the Senior Divisional Manager, Trichy, the Zonal Manager, Madras and the Chairman, L.I.C. By order dated September 14, 1990, the writ petition was dismissed by Mishra, J. It is worthwhile extracting the order therein :

"Heard, it is not known how none-the-less the petitioner was given a temporary appointment as clerk in one of the offices of the Life Insurance Corporation in the year 1988. Since regular vacancies have come to exist, the respondents have now proceeded to make recruitments in accordance with the rules. The petitioner has moved this Court saying that he has been recruited on temporary basis and extension also granted to him and that he should be regularised and given substantive appointment. The sheet anchor is a certain award made in the year 1985 in dispute with respect to regularisation of services of certain persons who had been appointed on temporary basis. In that award, it is stated that a scheme was worked out under which temporary employees were directed to be regularised. According to learned counsel for the petitioner, it shall be a discrimination in the teeth of Art. 16(1) read with Art. 14 of the Constitution of India.

2. Had this been a case showing that the petitioner's temporary appointment was made following the procedure prescribed for recruitment of Clerks and after affording equal opportunity to other qualified candidates, I would not have hesitated to consider the case of the petitioner. It appears, however, that the petitioner somehow got the temporary appointment. That appointment was regular or not, is not known.

3. So far as the award is concerned, it is admitted that it related to the service of those who have been appointed on temporary basis until 1985. Such employees who are covered by the award constituted a class by themselves, the petitioner does not fall in that class.

4. The so called regularisation of temporary appointment is unknown to law. Any attempt to do so without adhering to the rule enshrined under Art. 16(1) of the Constitution of India will be unconstitutional. Instead of the alleged discrimination that by not regularising the petitioner's temporary appointment, the respondents are said to have done, if they regularise the petitioner's

appointment, that will be arbitrary and indiscriminatory. There is no merit in this petition. It is accordingly dismissed. There will be no order as to costs."

10. The Association in Thanjavur filed W.P. No. 4907 of 1990 as against the Zonal Manager of the L.I.C., (South Zone), Madras, for issue of mandamus directing the L.I.C., to absorb and appoint all the members of the petitioner Association in respective Divisions of L.I.C. in the State of Tamil Nadu in Class III and Class IV posts. On issue of notice of motion, the L.I.C. filed a counter-affidavit and the matter was heard in detail. The Central Government was also impleaded as party to the writ petition. Ultimately, by a detailed order dated November 29, 1990, one of dismissed the writ petition. The contention of the petitioner therein that the members thereof would be entitled to be absorbed and to get permanent employment was negated in view of the provisions of the Regulations and Recruitment Instructions governing the L.I.C. It was also held that the awards of the National Tribunal were not applicable to the members of the Association. The judgment of Mishra, J. in Chelladurai's case, W.P. No. 11828 of 1989, order dated September 14, 1990, was referred. Expressing concurrence with the view taken by him it was held that the petition deserved to be dismissed. It was also observed that there were considerable disputes with regard to material facts which could not be conveniently adjudicated in the writ petition and it was more appropriate for adjudication under the Industrial Disputes Act. The learned Judge expressed the view that it was open to the petitioner association to seek remedy by way of reference by taking appropriate steps under the Industrial Disputes Act, if so advised, to redress the grievances of its members.

11. It should be mentioned here that an application was made under Sec. 10(2) of the Industrial Disputes Act by the Tamil Nadu Terminated Full Time Temporary L.I.C. Employees' Welfare Association for a reference to the National Tribunal. The Government of India by its letter dated August 29, 1990, addressed to the counsel for the Association informed him that all applications under Sec. 10(2) of the Act had to be made by both parties to the dispute either jointly or separately and as L.I.C. had not submitted a similar application on the subject, the application by the Association was not maintainable. That matter was also brought to the notice of the learned single Judge at the time of arguments in W.P. No. 4907 of 1990. It was only after taking note of all the contentions advanced from both sides, the order referred to above was passed. The said order was challenged on appeal in W.A. No. 42 of 1991. By order dated January 18, 1991, a Division Bench comprising Mishra and Govindasamy, JJ., dismissed the appeal affirming the view taken by the single Judge.

12. Certain individuals claiming to be in temporary service and apprehending termination thereof, filed W.P. Nos. 12043 of 1990 and 13442 of 1990 on the footing that they were entitled to be regularised and continue in service. They prayed for interim injunction restraining L.I.C. from terminating their services. Though interim orders were granted initially, they were vacated on September 20, 1990.

13. Undaunted by the aforesaid orders of this Court, the Associations of Terminated Temporary L.I.C. Employees in various Divisions started filing writ petition after writ petition in this Court praying for directions to the L.I.C. to absorb and appoint their members in Class III and Class IV posts in respective Divisions. Significantly, counsel for the petitioners in all of them was the same. We are now concerned with such writ petitions. In these writ petitions, the L.I.C. represented by the Zonal Manager, South Zone, Madras, is the first respondent and the Union of India is the second respondent. It is stated in the affidavit that these writ petitions are wider in scope and they differ from the earlier writ petitions filed against the Divisional Managers. The basis of the claim is, however, the same. Though the petitioners are not claiming that they are covered by the awards of the National Tribunals referred to earlier, it is their contention that the directions given in the Award to the L.I.C. and the general observations made therein would confer absolute rights on the members of the petitioner association. It is alleged that the L.I.C. is indulging in unfair labour practice as defined by the Industrial Disputes Act and it is not entitled to terminate the services of the members of the petitioners association, though admittedly they were appointed for specific periods temporarily. It is claimed that the members of the petitioners associations are entitled to the benefits of Sec. 25H of the Industrial Disputes Act. After the L.I.C. filed its counter-affidavit refuting the claim made by the petitioners, further contentions were raised by filing supplementary affidavits. In the writ petitions filed later, it is contended that the members of the petitioner's association are retrenched employees and as such would be entitled to claim the benefits of Secs. 25F, 25H and 25N of the Industrial Disputes Act. It also became necessary for the petitioners to challenge the validity of sub-clause (bb) of Sec. 2(oo) of the Industrial Disputes Act, which excluded from the definition of "retrenchment", termination of the service of the workmen as a result of the non-renewal of the contract of employment between the employer and the workmen concerned on its expiry or termination of such contract under a stipulation in that behalf contained therein.

14. Separate writ petitions were also filed for declaration that Sec. 2(bb) of the Industrial Disputes Act is unconstitutional and invalid. The petitioners also challenged the validity of Regulation 8 of Life Insurance Corporation of India (Staff) Regulations, 1960, which provides that no person appointed on a temporary basis as per Regulations, shall only by reason of such appointment be entitled to absorption in the service of the Corporation, or claim preference for recruitment to any post.

15. When W.P. No. 15588 of 1990 was filed, the petitioner therein applied for interim orders. On September 25, 1990 Janarthanam, J. passed an order restraining the L.I.C. for appointing any one in Class III and Class IV temporarily or permanently other than the petitioners. When the interlocutory petitions were posted for final orders after service, Mishra, J. felt that one of the questions raised therein was not covered by any previous decision of this Court and passed an order on December 7, 1990 that L.I.C. shall make only temporary

appointments without prejudice to the rights of the petitioners therein. That order was confirmed on appeal but for a clarification of the word "retrenched" used by the learned single Judge. Thereafter, similar orders were being passed in all the subsequent writ petitions.

16. III Reference : While passing an order in a Contempt Application viz., C.A. No. 74 of 1991 on June 20, 1991, Mishra, J. expressed his opinion that it would be proper if the administrative discretion is exercised to place the writ petitions for hearing before a Division Bench and necessary orders be obtained from the Hon"ble the Chief Justice for the needful. Thereafter, W.P. Nos. 15588 of 1990, 5841, 5945, 9437, 9438, 10847 and 10848 of 1991 were posted before a Division Bench comprising of Mishra and Janarthanam, JJ. and arguments would appear to have been heard in detail. Orders were reserved on September 6, 1991. Nearly eight months thereafter, the Division Bench thought fit to pass an order on April 23, 1992 referring the cases to larger Bench on the following reasoning :

"After detailed arguments in which several judgments have been cited showing that the Life Insurance Corporation Act, 1956, is a special enactment and under which special terms and conditions of services are created, an attempt has been made to suggest that the provisions of the Industrial Disputes Act including those as found in Chapter V-A in which some of the relevant provisions on which reliance have been placed on behalf of the petitioners occur, are not attracted to the employees satisfying the definition of the word "workman" in the service of the Life Insurance Corporation. Judgments of the courts cited before us have shown the approach to exclude the application of the provisions of the Industrial Disputes Act. None of the judgments, however, cited at the Bar appear to have taken notice of the provisions in Sec. 25J falling in Chapter V-A of the Industrial Disputes Act, which reads as follows :

"25 J. Effect of laws inconsistent with this Chapter : (1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946)."

This appears to be a salutary provision which makes all the provisions in Chapter V-A of the Industrial Disputes Act, 1947 applicable in cases of all categories of employees notwithstanding a special or specific enactment relating to their service conditions. Since, however, we have found that even cases involving Life Insurance Corporation, have proceeded on the footing that service conditions therein are independent of the conditions under the Industrial Disputes Act, we do not propose to finally adjudicate on this question without there being any authoritative pronouncement."

17. Immediately thereafter, the then Acting Chief Justice constituted this Full Bench and the matters were listed before us on April 30, 1992 for orders as to fixing a date for hearing. Between September 6, 1991 and April 23, 1992 several writ petitions were filed. Among them were W.P. No. 18621 to 18624 and 18565

of 1991, 2565 of 1992 and 2772 of 1992 filed by the Insurance Corporation Employees' Union. Learned counsel for the petitioners in the above writ petitions made a representation to the Hon'ble the Chief Justice and got them posted before us along with the other writ petitions, for which we had fixed the date of hearing as June 22, 1992. Number of other writ petitions were also filed during that period and interim orders had been obtained. Thus, as many as 18 writ petitions were listed before us for hearing.

18. IV. Judicial Fiction : When the matter was taken up for hearing, it was brought to our notice by counsel for the first batch of writ petitions which were the subject matter of the reference as such, that he filed a petition for review before the Division Bench for reviewing the order of reference to the Full Bench and that the Division Bench passed an order on July 19, 1992 directing him to raise the question before us. The order of the Division Bench reads as follows :

"A contention has been raised suggesting that the question of law that has, according to the reference order, arisen in fact does not arise for the reason of certain provisions in the regulations of the Life Insurance Corporation. Since the reference has already been accepted by the Hon'ble the Chief Justice and a Full Bench has been constituted, any contention as to the competency of the reference, in our opinion, should be decided by the Full Bench itself. If the Full Bench finds that the reference is not competent, it may turn down the reference and the case then will stand remitted to the Bench hearing the writ petitions. He accordingly does not propose to make any observation on the merits of the contentions. It shall be open to the learned counsel for the petitioner to raise all contentions in this behalf before the Full Bench. This petition is accordingly deemed to have been filed in the reference for consideration by the Full Bench."

19. The Division Bench ought to have dismissed the petition for review when it found that it was not competent to decide the question of the validity of the reference. But, the Division Bench declared that the petition for review should be deemed to have been filed in the reference for consideration by the Full Bench. We are required to decide that question too by introduction of a "judicial fiction", if we may say so.

20. At any rate, there is no substance in the contention of the petitioners' counsel that the reference is invalid. According to him, the question of law set out in the order of reference does not arise in these cases. That contention is clearly erroneous, inasmuch as the question of law does arise for consideration squarely. Apart from that, it is not necessary for the purpose of law reference to a Full Bench that a question of law should arise. Under Rule 6 of O. 1. of the Appellate Side Rules of this Court, the Chief Justice may direct that any application, petition, suit, appeal or reference shall be heard by a Full Bench notwithstanding anything in the earlier rules. In these matters, the Hon'ble the Chief Justice had directed the writ petition to be heard by this Full Bench. It might have been at the instance of a Division Bench on the footing that a question of law had arisen which required to be decided by a Full Bench. But,

once the reference is made by the Hon"ble the Chief Justice, the competence of the Full Bench to hear the matter cannot be challenged on the ground that such a question of law does not arise.

21. V. Contentions : We not proceed to refer to the contentions put forward by the petitioners and the respondents. Mr. Singaravelan, counsel representing the petitioners in the first batch of writ petitions which were actually referred by the Division Bench to us, raised the following contentions :

"(1) The Life Insurance Corporation of India (Staff) Regulations, 1960, do not apply to the petitioners, as they are expressly excluded in the letters of appointment issued to them.

(2) The said Regulations cannot override the provisions of the Industrial Disputes Act and by virtue of Sec. 25J of the said Act. The petitioners are entitled to invoke all the provisions of the Industrial Disputes Act.

(3) The said Regulations are not enforceable as they were not placed before Parliament for approval.

(4) The said Regulations are unconditional as they offend the provisions of Arts. 14 and 16 of the Constitution of India.

(5) The L.I.C. is estoppel by the Awards of the National Tribunals from denying the claims of the petitioners.

(6) The L.I.C. is acting arbitrarily and in violation of Arts. 14 and 16 of the Constitution of India.

(7) The L.I.C. is guilty of unfair labour practice.

(8) Sec. 2(oo)(bb) of the Industrial Disputes Act is unconstitutional."

22. Mr. K. Chandru, representing the petitioners in the later batch of the petitions which were posted before us by the Hon"ble the Chief Justice at his instance, put forth the following arguments :

(1) The L.I.C. is governed by the provisions of the Industrial Disputes Act.

(2) The provisions of the Industrial Disputes Act are excluded only to the extend to which they are repugnant to the Life Insurance Corporation of India (Staff) Regulations, 1960.

(3) The Regulations will govern only the matters relating to salary and such other terms of service.

(4) The right to raise an industrial dispute and get it adjudicated by the Tribunals constituted under the Industrial Disputes Act is not taken away by the provisions of the Life Insurance Corporation Act or the Regulations framed thereunder.

(5) Since a reference has already been made by the Central Government to the Central Government Industrial Tribunal in New Delhi, the questions raised in

these petitions could be left open and the parties should be directed to agitate their rights before the said Tribunal.

(6) The validity of Sec. 2(oo)(bb) of the Industrial Disputes Act is not questioned by his clients in these proceedings.

23. Per contra, Senior Counsel appearing for the L.I.C. contended as follows :

(1) The writ petitions should be dismissed in limine inasmuch as they are based on alleged unfair labour practice on the part of the L.I.C. and there is no warrant for such an allegation, because the L.I.C. was making temporary appointments without making permanent appointments in accordance with the Regulations only because of the various interlocutory orders passed by the Tribunals and this Court.

(2) The Life Insurance Corporation of India (Staff) Regulations are valid and the validity of the same cannot be questioned by the petitioners.

(3) The provisions of the Industrial Disputes Act are excluded in matters covered by the Regulations which provide for all the terms and conditions of service of the employees of the L. I.C. and Sec. 25J of the Industrial Disputes Act cannot operate.

(4) Sec. 2(oo)(bb) of the Industrial Disputes Act is quite valid and constitutional.

(5) The petitioners cannot claim to be retrenched workmen and they are not entitled to claim any relief before this Court in these petitions on the basis of the alleged retrenchment.

24. VI. Points for decision : After considering the arguments advanced from both sides, we formulate the following points for consideration :

(1) Are the Life Insurance Corporation of India (Staff) Regulations valid and are they applicable to the petitioners ?

(2) Are the provisions of the Industrial Disputes Act applicable to the petitioners ?

(3) Is the L.I.C. guilty of unfair labour practice ?

(4) Is Sec. 2(oo)(bb) of the Industrial Disputes Act unconstitutional ?

(5) Are the petitioners "retrenched employees" as defined by the Industrial Disputes Act ?

25. VII. Point No. 1. : Validity and applicability of regulations : The L.I.C. was constituted under the Life Insurance Corporation Act, 1956, to provide for the nationalisation of life insurance business in India by transferring all such business to a Corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and for matters connected therewith or incidental thereto. Sec. 48 of the Act enables the Central Government to make rules to carry out the purposes of the Act by notification in

the Official Gazette. Sub-sec. (2) of Sec. 48 of the Act specifies certain matters for which rules may provide without prejudice to the generality of the power conferred by sub-sec (1). Sub-sec. (3) provides for placing the rules made by the Central Government before each House of Parliament. Sec. 49(1) of the Act empowers the L.I.C. to make regulations not inconsistent with the Act and the rules made thereunder, with the previous approval of the Central Government by notification in the Gazette of India, to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of the Act. Sub-sec. (2) of Sec. 49 of the Act lists certain matters for which regulations may, without prejudice to the generality of the power conferred by sub-sec. (2) thereof, which was introduced by Amendment Act 17 of 1957 with retrospective effect, relates to the terms and conditions of service of persons who have become employees of the L.I.C. under sub-sec. (1) of Sec. 11 of the Act.

26. The Act was amended by the Life Insurance Corporation (Amendment) Act, 1981, which shall be deemed to have come into force on January 31, 1981. Sec. 2 thereof amended Sec. 48 of the Life Insurance Corporation Act by inserting Clause (oo) in Sub-sec. (2) after clause (c) thereof. The new clause refers to the terms and conditions of service of the employees and agents of the L.I.C. including those who became employees and agents of the L.I.C. on the appointed day under Act. After sub-sec. (2) of Sec. 48 of the Act, three more sub-section numbered as (2-A), (2-B) and (2-C) were introduced. They read as follows :

"(2A). The regulations and other provisions as in force immediately before the commencement of the Life Insurance Corporation (Amendment) Act. 1981, with respect to the terms and conditions of service of employees and agents of the Corporation including those who became employees and agents of the Corporation on the appointed day under this Act, shall be deemed to be rules made under clause (cc) of sub-sec. (2) and shall, subject to the other provisions of this section, have effect accordingly.

(2B). The power to make rules conferred by clause (cc) of sub-sec. (2) shall include -

(i) the power to give retrospective effect to such rules; and

(ii) the power to amend by way of addition, variation or repeal, the regulations and other provisions referred to in sub-sec. (2A), with retrospective effect, from a date not earlier than the twentieth day of June, 1979.

(2C). The provisions of Clause (cc) of sub-sec. (2) and sub-sec (2B) and any rules made under the said clause (cc) shall have effect, and any such rule made with retrospective effect from any date shall also be deemed to have had effect from that date, notwithstanding any judgment, decree or order of any court, tribunal or other authority and notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947) or any other law or any agreement, settlement, award or other instrument for the time being in force."

27. Sec 49 of the Life Insurance Corporation Act was amended by omitting clause (bb) and the words "and the terms and conditions of service of employees or agents" in clause (b) of sub-sec. (2). Sub-Sec. (3) was inserted after sub-sec. (2), which reads as follows :

"Every regulation made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session of the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation."

28. The validity of the Amendment Act 1981 and the Rules framed by the Central Government pertaining to bonus and dearness allowance for Class III and Class IV employees was challenged before the Apex Court in A.V. Nachane and Others Vs. Union of India (UOI) and Another, . The Supreme Court held that the Act and the Rules were valid except in so far as the rules sought to abrogate the terms of certain settlement between the L.I.C. and the workers in 1974 relating to bonus. It was held that the said rules would operate only prospectively from February 2, 1981, the date of publication of the Rules.

29. Some of the contentions put forward by learned counsel for the petitioners were only repetitions of the contentions raised in the above case and rejected by the Supreme Court. It is certainly not open to the petitioners to challenge the validity of the Amendment Act, 1981 and the provisions introduced thereby. However, some of the provisions of the Life Insurance Corporation of India (Staff) Regulations, 1960, which by virtue of Sec. 48(2A) of the Life Insurance Corporation Act shall be deemed to be rules made under sub-sec. 2(cc) of Sec. 48, were attacked by the petitioners. A vague argument was advanced that the object of the Amendment Act was only to streamline the salary structure of the employees and agents of the L.I.C. and to overcome the financial difficulties faced by the L.I.C. on account of the settlements of 1974 relating to bonus which were held to be enforceable by the Supreme Court in Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, and, therefore the Regulations relating to other terms and conditions of service of the employees and the agents should be held to fall outside the scope of the Amendment Act resulting in their invalidity as a subordinate legislation made in excess of the delegated power. We do not find any substance in the contention inasmuch as Sec. 48(2)(cc) introduced by the Amendment Act refers to all the terms and conditions of service of the employees and agents of the L.I.C. and is not confined to salary or bonus. In fairness to learned counsel for the petitioners, it should be pointed out that he did not pursue the said contention any further.

30. However, he concentrated his attack on Regulations 8 of the Life Insurance Corporation of India (Staff) Regulations and contended that it was unconstitutional and it offends the provisions of Arts. 14, 16 and 21 of the Constitution of India. Regulation 8 thereof is in the following terms :

"8. (1) Notwithstanding anything contained in these Regulations, a Managing Director, Executive Director (Personnel), a Zonal Manager or a Divisional Manager may employ staff in Classes III and IV on a temporary basis subject to such general or special directions as may be issued by the Chairman from time to time.

(2) No person appointed under sub-Regulation (1) shall only by reason of such appointment be entitled to absorption in the service of the Corporation or claim preference for recruitment to any post."

Learned counsel submitted that right to work is guaranteed by Part IV of the Constitution of India and right to livelihood is guaranteed under Art. 21 of the Constitution of India According to him, as Regulations 8 prevents a temporary employee from seeking absorption in the service of the L. I.C. or claiming preference for recruitment, it violates the provisions of Arts. 14, 16 and 21 of the Constitution of India. It was also contended that right to public employment was recognised by the provisions of the Constitution and no person could be deprived of the same by a regulation of this type. It was further argued that Regulation 12 of the Life Insurance Corporation of India (Staff) Regulations recognised the principle of re-employment of retrenched temporary employees in the Explanation appended thereto and thereby the principles underlying Sec. 25H of the Industrial Disputes Act and inasmuch as Regulation 8 sought to curtail the same, it was arbitrary and therefore, unconstitutional. Regulation 12 referred to by learned counsel provides that no person who has been dismissed from the service of the L.I. C. shall be re-employed. It is provided therein that a person who has been compulsorily retired or removed from service or whose services have been terminated, may be re-employed with the prior sanction of the L.I.C. in the case of appointments to posts belonging to Class I and the prior sanction of the Executive Committee in the case of appointments to posts belonging to Classes II, III, and IV. The proviso enables the appointing authority to re-employ, with the approval of the Chairman, persons who have resigned from service. Thus, the Regulation prescribes the authorities who should sanction re-employment of certain categories of persons mentioned therein. The main part of the Regulation does not make any reference whatever to retrenched employees. However, the Explanation refers to them and it is in the following terms :

"Re-employment of retrenched temporary employees shall not be deemed to be re-employment under this regulation and such persons may be re-employed without the sanction of the Chairman, the Executive Committee or the Corporation."

Thus, the Explanation only excludes retrenched temporary employees from the categories mentioned in the regulation. That does not mean that the said

regulation provides for re-employment of retrenched temporary employees. There may or may not be a specific provision regarding the same. Learned counsel for the petitioners has not been able to bring to our notice any specific provision relating to re-employment of retrenched temporary employees. However, the persons covered by Regulation 8 cannot claim to be retrenched temporary employees as contemplated in the Explanation to Regulation 12. Regulation 8 deals with a particular situation of employment of Staff in Classes III and IV on a temporary basis, who will be governed by general or special directions as may be issued by the Chairman from time to time. Such employees cannot by reason of such appointment only be entitled to absorption in the service of the L.I.C. or claim preference for recruitment to any post.

31. Learned counsel for the petitioners relied on the judgment of the Supreme Court in *The Cawnpore Tannery Ltd., Kanpur Vs. S. Guha and Others*, and submitted that the principle of giving an opportunity to a retrenched employee to join service if and when the employer had occasion to employ another hand, is of general application on the ground that it is based on consideration of fair play and justice. It is submitted that Sec. 25H of the Industrial Disputes Act has only recognised the said right of a retrenched workman which already existed and was recognized by industrial adjudication prior to introduction of the said Section. The question whether the petitioners are retrenched employees is itself in dispute and it is being considered by us in a later part of this judgment. Hence, it cannot be assumed that the petitioners are retrenched employees for the purpose of deciding the validity of Regulation 8 of the Life Insurance Corporation of India (Staff) Regulations and holding that the said regulation is arbitrary and unconstitutional inasmuch as it prevents the petitioners from claiming absorption in the service or preference for recruitment.

32. Learned counsel drew our attention to the judgment of the Andhra Pradesh High Court in *T. Siva Rao v. Andhra Pradesh State Road Transport Corporation*, (1979) 2 A. W.R. 338, in which it was held that public employment was a guaranteed right to the Indian citizen under Art. 16 of the Constitution of India and the effect of guarantee cannot be whittled away or destroyed by any law made by the State or a contract forced upon a citizen. That was a case in which seniors were sought to be reverted while keeping the juniors in the higher posts and the general observations made in the judgment should be understood in the context of the facts of that case. That cannot have any bearing in the present case.

33. Reliance was placed on the judgment of a Full Bench of Kerala High Court in *P.V. Mani and Others Vs. Union of India (UOI) and Others*, . In that case, the regulations made by the L.I.C. with reference to alteration of remuneration and other terms and conditions of service of Development Officers were challenged. While the Full Bench held that the Regulations were not valid as they altered the conditions of service of the petitioners to their prejudice without compliance with Sec. 9 of the Industrial Disputes Act, found that the Life Insurance Corporation

(Amendment) Act, (1 of 1981) validated the regulations with retrospective effect from the date of their promulgation. Thus, the judgment of the Full Bench far from helping the petitioners is only against them to some extent.

34. Learned counsel placed reliance on the judgment of the Supreme Court in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, , holding that right to life in Art. 21 of the Constitution of India included a right to livelihood. According to learned counsel, Regulation 8 violated Art. 21 of the Constitution of India and also the Directive Principles inasmuch as it deprived the petitioners of their right to livelihood. The propositions laid down by the Supreme Court in that case cannot be torn out of the context of the facts and applied to the present case. The principle laid down in the above case has been explained later by the Supreme Court to which we will refer a little later. Suffice it for the present to say that the ruling in *Olga Tellis v. Bombay Municipal Corporation*, (supra) has no application to this case.

35. Strong reliance is placed on the ruling of the Supreme Court in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, . The question which arose before the Court was whether a rule providing for removal of a permanent employee from service by giving him three months' notice in writing or paying him equivalent of three months' basic pay and dearness allowance in lieu of such notice was arbitrary and unreasonable. On the facts of the case, the court held that the said rule was unconditional and it was also opposed to public policy within the meaning of Sec. 23 of the Contract Act and, therefore, unenforceable. On the facts, the case related to permanent employees and has no application to temporary appointments. Apart from that, the Apex Court has taken care to point out clearly that the validity of such rules should be decided on the facts and circumstances of each case. It will be advantageous to extract the following passage in the judgment found at pages 208 and 209 of the report :

"... This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable

and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organisations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myraid situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."

Hence, the above ruling as such does not help the petitioners in the present case.

36. A similar rule was considered by the Constitution Bench of the Supreme Court in *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, . Learned counsel for the petitioners placed reliance on the same. That was also a case of a regulation providing for removal of permanent employees from service without holding any enquiry and without assigning any reason. That regulation was struck down as invalid. That ruling will have no application in this case, as this is not a case of permanent employees.

37. As stated earlier, the Supreme Court had considered similar contentions urged against the validity of the Amendment Act and the rules relating to bonus and dearness allowance in *A. V. Nachana v. Union of India*, (supra). Some of the passages in the judgment of the court are relevant and useful for the purpose of considering the validity of the contentions of the petitioners in the present case. They are extracted hereunder (pp. 115, 118-119)

"7. The validity of the Amendment Act and the Life Insurance Corporation of India Class III and Class IV Employees (Bonus and Dearness Allowances) Rules, 1981 have been challenged on several grounds. It was argued that the Act and the rules were violative of Arts. 14, 19(1)(g) and 21 of the Constitution. It was further contended that the said Act was invalid on the ground of excessive delegation of legislative functions. Another contention raised was that in any event sub-sec. (2C) of Sec. 48 was invalid to the extent it permitted retrospective operation to Rule 3 to override the order of this Court disposing of *Life Insurance Corporation of India Vs. D.J. Bahadur and Others*, . The challenge based on Art. 19(1)(g) and Art. 21 does not appear to have any substance. Apart from anything else, a claim based on the 1974 settlement is certainly not a fundamental right that could be enforced thought this Court. As regards Art. 21, the first premise of the argument that the word "life" in that Article includes livelihood was considered and rejected in *In Re: Sant Ram*, : ..

The Attorney General relied strongly on these observations in submitting that it is not really the rules framed by the Central Government in exercise of the delegated authority that override the Industrial Disputes Act or any other

existing law but the power of abrogating the existing laws is in sub-sec. (2C) of Sec. 48 enacted by Parliament itself. The observations quoted above, from *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, which was decided by a bench of five Judges appear to support the Attorney General's contention. The question however remains to be answered, does the Life Insurance Corporation Act, 1956 as amended in 1981 state any policy to guide the rule making authority ? We have earlier referred to the observations of Mukharjee, J. in the *Delhi Laws* case that the legislature can formulate a policy as broadly and with as little or as much details as it thinks proper and may delegate the rest of the legislative work to a subordinate authority who will work out the details within the framework of the policy. In *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, one of the questions for decision was whether Sec. 3 of the Essential Supplies (Temporary Powers) Act, 1946 amounts to delegation of legislative power outside the permissible limits. It was held that legislature has laid down a legislative principle which was "maintaining or increasing supplies of any essential commodity" and "ensuring their equitable distribution and availability at fair prices". That statement was held as offering sufficient guidance to the Central Government in exercising its powers under Sec. 3. In the instant case, the policy as stated in the preamble of the Amendment Act is that "for securing the interests of the Life Insurance Corporation of India and its policy-holders and to control the cost of administration, it is necessary that revision of the terms and conditions of the service applicable to the employees and agents of the Corporation should be undertaken expeditiously." The policy stated here is at least as clear as the one held in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, offering sufficient guidance to the Central Government in exercising its powers under that Act. We have referred to Sec. 48(3) of the Life Insurance Corporation Act which requires that every rule made by the Central Government under this Act shall be laid before each House of Parliament and that if both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made the rule shall thereafter have effect only in modified form or be of no effect, as the case may be. This Court in *D.S. Garewal Vs. The State of Punjab and Another*, observed as follows in respect of a similar provision requiring the rules made by the delegated authority to be laid on the table of Parliament and making the rules subject to modification, whether by way of repeal or amendment on a motion made by Parliament (at p. 518) :

This makes it perfectly clear that Parliament has in no way abdicated its authority, but is keeping strict vigilance and control over its delegate".

In view of what has been held in *Harishankar Bagla* and *D. S. Garewal* (supra) both of which were decided by a larger Bench we do not find it possible to accept the contention that the Act is invalid on the ground of excessive delegation of legislative function.

38. In *Sant Ram Bhai v. State of Haryana*, 1992, L I.C. 976, a Full Bench of the

Punjab and Haryana High Court has held that in the case of ad hoc appointments the appointee does not acquire any right to hold the post and termination after the expiry of fixed period is neither arbitrary nor unreasonable. The relevant portions of the judgment are thus :

"3 A temporary Government servant has no right to hold a post. His service can be terminated without assigning any reason, either under the terms of the contract providing for such termination or under the relevant statutory rules regulating terms and conditions of temporary Government servants. Termination of services simpliciter does not visit him with any evil consequences. In *Parshotam Lal Dhingra Vs. Union of India (UOI)*, which still holds the field, the view expressed by the Constitution Bench in that evil consequences do not include the termination of services of a temporary Government servant in accordance with the terms and conditions of service. This view has been subsequently reiterated in *Jagdish Mitter Vs. The Union of India (UOI)*, and *State of Punjab v. Shri Shukh Raj Bahadur*, 1970 - I - LLJ - 373. All these authorities have again been referred to, considered and applied in a recent decision by the Supreme Court in the *State of U.P. v. Kaushal Kishore Shukla* AIR 1991 S.C. 793. The Hon"ble Mr. Justice K. N. Singh (as his Lordship then was), while delivering the judgment observed (at p. 797)

"Under the service jurisprudence a temporary employees has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service."

We may also refer to a decision of Division Bench of this Court in *Om Prakash Sharma v. State of Haryana* (1981) 1 S L. R. 314. In that case also, the appointment was for a period of six months and on ad hoc basis and the services were liable to be terminated without any prior notice. After referring to a decision of a Full Bench of this Court in *S.K. Verma and Others Vs. State of Punjab and Others*, the Division Bench held that an ad hoc employee has no right to hold the post till the termination of his services for a valid justification and his services are liable to be terminated even otherwise without any prior notice in terms of his employment. In our opinion, the decision of the Supreme Court in *Kaushal Kishore Shukla*, case AIR 1991 S.C. 793, and the decision of this Court in *Om Prakash Sharma* case (1981) 1 SL.R. 314, furnish a complete answer to the first question.

5. We are aware of the Supreme Court decision in *Rattan Lal and Others Vs. State of Haryana and Others*, wherein the policy of the State Government of ad hocism in public employment has been strongly deprecated. Nevertheless, circumstances may arise necessitating the appointment on ad hoc basis. It may be on account of the absence of necessary rules or non-availability of incumbents through due process of selection involving time, and exigencies of service may not allow the posts to remain unmanned meanwhile. All the same, such appointments do not confer any right on the appointees for regular appointment to such posts. Such appointments, as observed by the Division Bench of the

Delhi High Court in *Kuldeep Chand Sharma v. Delhi administration*, (1978) 2 S L.R. 379 (a decision relied upon by the learned counsel for the petitioner), are in the nature of stop gap arrangements. That decision itself is an authority for the proposition that an ad hoc appointee has no right to hold that post to which he is so appointed and may be reverted to the original position for valid reasons. As we have shown above, this stop gap arrangement by ad hoc appointment can well be terminated in terms of the contract. The learned counsel for the petitioner relied on yet another decision in *Mrs. Anita v. State of Rajasthan*, (1991) 4 S.L.R. 145 (Raj). This decision renders little assistance to the petitioner. In that case, the petitioner was appointed as a Lecturer in English and her appointment was terminated at the end of every academic session. She used to be reappointed at the beginning of the next academic session. Such process continued for long seven years. The Rajasthan Public Service Commission did not advertise the posts for regular appointment of Lecturers in English. It was under these circumstances that a Division Bench of the Rajasthan High Court in that case directed that the petitioner be allowed to continue in service till the regularly recruited candidates became available by due process of selection by the Rajasthan Public Service Commission. The appointment in the present case is under entirely different circumstances. It is the terms of that appointment which govern the present case.

10. Learned counsel for the petitioner however, urged that once a person was appointed to the post, the tenure expressed in the appointment order loses all significance and the person so appointed acquires a status which cannot be terminated except under the relevant law. The nature of the post and the intention to retain it should be ascertained. Learned counsel attempted to support such contention on the authority of the decision of the Supreme Court in *Union of India v. Arun Kumar Roy* 1986 I LLJ - 290. In our opinion, the reliance on this decision by the learned counsel, is completely misplaced. That decision is only an authority for the proposition that after an appointment, it is the rule governing the service conditions of the employee which shall prevail over the initial terms of the appointment. In the present case as we have indicated above, the petitioner has not acquired any status as the Veterinary and Livestock Development Assistant by force of the appointment under Annexure P-2, which appointment was only for a fixed tenure and on ad hoc basis. This argument, therefore, holds no water and must be rejected."

With respect we concur with the principles set out in the above judgment.

39. As stated earlier, the ruling in *Cawnpore Tannery v. B. Guba*, (supra), has been explained by the Supreme Court in *Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others*, . That was a case in which the petitioners were employed on daily wages. They filed petitions for their absorption as regular employees in the Development Department of the Delhi Administration and for injunction prohibiting the termination of their services and for the difference in wages paid to them and those paid to the

regular employees. Rejecting the contentions of the petitioners, the Supreme Court held that they had no right to be regularised. Referring to the argument that right to life would include right to livelihood, the Court observed. (pp. 457-458) :

"20. There is no doubt that broadly interpreted and as a necessary logical corollary, right to life would include the right to livelihood and, therefore, right to work. It is for this reason that this Court in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, , while considering the consequences of eviction of the pavement dwellers had pointed out that in that case the eviction not merely resulted in deprivation of shelter but also deprivation of livelihood inasmuch as the pavement dwellers were employed in the vicinity of their dwellings. The court had therefore, emphasized that the problem of eviction of the pavement dwellers had to be viewed also in that context. This was, however, in the context of Art. 21 which seeks to protect persons against the deprivation of their life except according to procedure established by Law. This country has so far not found it feasible to incorporate the right to livelihood as a fundamental right in the Constitution. This is because the country has so far not attained the capacity to guarantee it, and not because it considers it any the less fundamental to life. Advisedly, therefore, it has been placed in the Chapter on Directive Principles Art. 41 of which enjoins upon the State to make effective provision for securing the same "within the limits of its economic capacity and development". Thus even while giving the direction to the State to ensure the right to work, the Constitution makers thought it prudent not to do so without qualifying it."

The court also took notice of the pernicious consequences which followed the direction for regularisation of such workmen on the only ground that they had put in work for 240 and more days. The Court observed (p. 459) :

"23. Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchanges, and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of

those who are waiting at the Employment Exchanges for years. Not all those who gain such back-door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in Government Departments, Public Undertakings or Agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are timebound and there is no need for the workmen beyond the completion of the works undertaking. The public interests are thus jeopardised on both counts."

40. In *State of Punjab and others Vs. Surinder Kumar and others*, the Supreme Court held that part-time employees were not entitled to claim regularisation. In that case, the respondents before the Apex Court were offered posts of part-time Lecturers on the specific condition that they could be relieved at any time without notice and that payment would be made at the rate indicated at hourly basis. The offers were accepted and they were appointed accordingly. Their contention that they were entitled to be regularised in the posts of Lecturers with salary at regular pay scale was accepted by the High Court of Punjab and Haryana. Setting aside the said order, the Supreme Court held that no reliance could be placed by the respondents before them on earlier orders of that Court directing regularisation of temporary employees in certain cases. It was held that the terms on which the appointments were made were enforceable and binding on the parties.

41. Learned counsel for the petitioners has not been able to bring to our notice any circumstance vitiating the validity of Regulation 8. It is not shown to be arbitrary or discriminatory. Hence, we hold that Regulation 8 of the Life Insurance Corporation of India (Staff) Regulations, 1960 is valid and enforceable. The petitioners have not challenged the validity of any other regulation before us.

42. It was next argued that the Regulations are not valid as they were not placed before each House of Parliament as required by sub-sec. (3) of Sec. 48 of the Life Insurance Corporation Act. There is a basic fallacy in this contention. The Regulations were framed in 1960 and they were notified in Gazette of India, Part IV, dated July 22, 1960 and they are in force from July 1, 1960. At the time when the Amendment Act was passed, the Regulations were already in force. Sub-sec (2-A) of Sec. 48 of the said Act expressly refers to the regulations which were in force before the Amendment Act and declares that they shall be deemed to be Rules under sub-sec. (2)(cc) of the section. There is no presumption that the regulations were not placed before the Parliament. On the other hand, the presumption is the other way as Sec. 114(e) of the Indian Evidence Act would apply whereunder the Court may presume that judicial and official acts have

been regularly performed. In any event, the enforceability of the Regulations does not depend on any approval of the Parliament. The language of sub-sec (3) of Sec. 48 of the Act is telltale. The sub-section reads as follows :

"Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and, if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any notification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

Under the sub-section, the rules are to be placed before each House of the Parliament. If both Houses agree in making any modification in the rule, it shall have effect thereafter only in such modified form. If both Houses agree that the rule shall not be made, thereafter the rule shall be of no effect. The last part of the sub-section is very significant. That declares that any modification or annulment shall be without prejudice to validity of anything previously done under the rule. Hence, the rules come into force from the date notified. The enforcement of the rules need not wait till both Houses agree in making any modification or agree that the rule shall not be made. Unless both Houses decide to make a modification or take the view that the rule shall not be made, the rules are enforceable. That is why, a provision is made in the last part of the sub-section that any modification or annulment of the rule shall not prejudice the validity of anything previously done under the rule. Hence, there is no substance in the argument advanced by learned counsel.

43. A curious contention is raised by counsel for the petitioners that the regulations do not apply to the petitioners. Reliance is placed on recitals in some of the Letters of Appointment. In particular, our attention was drawn to a Letter of Appointment dated March 26, 1990 issued to one T. Gunasekaran. It reads thus :

"You are hereby offered the post of Assistant on temporary basis for a period of 30 (thirty) days from the date of your joining at the following office of the Corporation :

"CBO IX".

During the period of appointment, you will be paid a basic pay of Rs. 1,000 per month and allowances as per rules.

During this period of temporary appointment, you are liable to be discharged from the services of the Corporation at any time without notice and without assigning any reasons whatsoever.

During this period of services with the Corporation, the Staff Regulations of the Corporation shall not apply to you, but you shall obey all such orders and instructions as may be given to you from time both orally and in writing.

During the temporary period of your service, you shall not be entitled to any leave, whatsoever, other than the days on which the office of the Corporation are closed and if you remain absent on any working day, a proportionate amount shall be cut from your total monthly remuneration for the date of absence. You shall be entitled to Casual Leave at the rate of 1-1/4 days for each completed month of engagement.

You shall not be entitled to any Travelling Allowance for joining the post of your temporary appointment.

It is clearly to be understood that the appointment is purely temporary in nature and will not entitle you to any priority or preference for employment in any of the cadres of the L. I.C. of India.

If the terms and conditions of temporary appointment hereinabove offered are acceptable to you, please report for duty to the office of the Corporation, stated in para 1 immediately failing which this offer will lapse. Please note that this appointment will expire on April 24, 1990."

44. Reliance is placed on paragraph 4 thereof, in which it is stated that the staff regulations of the Corporation shall not apply to the appointee. The contention of learned counsel is wholly unsustainable. The sentence on which reliance is placed cannot be split up into the two independent parts and construed independently. It is one sentence in all. The reason for stating that the Staff Regulations of the Corporation shall not apply to the appointee is obvious. It is stated therein clearly that the appointee shall obey all orders and instructions as may be given to him from time to time, both orally and in writing. This is clearly in accord with Regulation 8. Under that Regulation, staff employed on a temporary basis are subject to such general or special directions as may be issued by the Chairman from time to time. Hence, it is beyond doubt that the petitioners are appointed under Regulation 8 on a temporary basis. There is no warrant for contending that Regulation 8 is itself inapplicable to the petitioners. It is clear from the Letter of Appointment that the appointment is for a particular period of thirty days expiring on April 24, 1990.

45. Consequently, we hold that the Life Insurance Corporation of India (Staff) Regulations, 1960, are valid and they are applicable to the petitioners.

46. VIII Applicability of Industrial Disputes Act. : It was argued for the petitioners by Sri Singaravelan that the Industrial Disputes Act is a special enactment and it will prevail over the general enactment, viz., the Life Insurance Corporation Act. The position which prevailed before the Amendment Act of 1981 was considered in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, . It was held by the Supreme Court that vis-a-vis industrial disputes

between the Corporation and the workmen, the Industrial Disputes Act was a special legislation which prevailed over the Life Insurance Corporation Act, which was a general legislation.

It was pointed out that in the matter of compensation on nationalisation the latter Act was a special statute. According to learned counsel the position did not change after the amendment of Life Insurance Corporation Act, 1981. He placed reliance on several rulings of the Apex Court in support of his arguments. None of them helps learned counsel in this extreme contention. We advert to them a little later.

47. Before that, we will briefly refer to the relevant provisions of the Life Insurance Corporation Act after the amendment of 1981 and the relevant rulings of the Supreme Court considering the same. We have already extracted the provisions of sub-secs. (2cc), (2A), (2B) and 2(C) of Sec. 48. Sub-sec. 2(cc) empowered the Central Government to frame rules providing for the terms and conditions of service of the employees and agents of the Corporation. By the fiction introduced in sub-sec. (2A), the regulations already in force are deemed to be rules made under clause (cc) of sub-sec.(2). Sub-sec (2C) contains the "non obstante" clause. That sub-section gives overriding effect to the rules. The relevant part of the sub-section is found in the words "notwithstanding any judgment, decree or order of any Court, Tribunal or other authority and notwithstanding anything contained in the Industrial Disputes Act (14 of 1947)". A plain reading of the section leaves no doubt that the rules will prevail over the provisions of the Industrial Disputes Act. It goes without saying the the theory of "occupied field" will apply and the matters for which the rules provide are excluded from the purview of the Industrial Disputes Act.

48. It is in this connection, the particular question raised by the Division Bench in its order of reference as to the effect of Sec. 25J of the Industrial Disputes Act arises. The said section is in the following terms :

"(1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law (including standing orders matter under the Industrial Employment (Standing Orders) Act, 1946).

Provided that where under the provisions of any other Act or Rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so

far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter."

49. This is a case of two non obstante clause in two enactments and the question raised is which clause will prevail over the other. On first principles, the answer is very simple. When the Legislature has thought fit to exclude specifically the provisions of the Industrial Disputes Act by the amendment of 1981, there can be no doubt that the provisions of Sec. 25J of the Industrial Disputes Act have become ineffective to the extent to which the non obstante clause in Sec. 48(2C) of the Life Insurance Corporation Act operates. The Legislature was conscious of the existence of the Industrial Disputes Act and the provisions thereof including Sec. 25J. When it used the expression "anything contained in the Industrial Disputes Act, 1947" in Sec 48(2C) of the Life Insurance Act, it had clearly repealed the provisions of Sec. 25J of the Industrial Disputes Act pro tanto.

50. As this is a case of an express provision in the enactment, the general principle that a special Act will prevail over a general Act or that a later general Act may not repeal an earlier special Act will have no application. The language of the section is clear and unambiguous and effect must be given to it. There is no point in referring to the ruling dealing with enactments which are silent on that question. There is no need to resort to the theory of implication because the language is specific and clear. It will be useful in this connection to refer to certain observations made by the Supreme Court in *Municipal Council Palai Vs. T.J. Joseph and Others*, . That was a case in which the doctrine of implied repeal was invoked. The following passages in the judgment set out the law succinctly :

"(9) It is undoubtedly true that the legislature can exercise the power of repeal by implication. But it is on equally well-settled principle of law that there is a presumption against an implied repeal. Upon the assumption that the legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. Of course, this presumption will be rebutted if the provisions of the new Act are so inconsistent with the old ones that the two cannot stand together.

(1) It must be remembered that at the basis of the doctrine of implied repeal is the presumption that the legislature which must be deemed to know the existing law did not intend to create any confusion in the law by retaining conflicting provisions on the statute book and, therefore, when the court applies this doctrine it does no more than give effect to the intention of the legislature ascertained by it in the usual way i.e. by examining the scope and the object of the two enactments, the earlier and the later.

Of course, there is no rule of law to prevent repeal of a special statute by a later general statute and, therefore, where the provisions of the special statute are wholly repugnant to the general statute, it would be possible to infer that the special statute was repealed by the general enactment. A general statute applies

to all persons and localities within its jurisdiction and scope as distinguished from a special one which in its operation is confirmed to a particular locality and, therefore, where it is doubtful whether the special statute was intended by the general statute the Court should try to give effect to both the enactments as far as possible. For as has been pointed out at p. 470 of Sutherland on Statutory Construction, Vol. 1, where the repealing effect of a statute is doubtful, "the statute is to be strictly construed to effectuate its consistent operation with the previous legislation."

51. In the present case, the doctrine of implied repeal has no applicability as there is express repeal in unequivocal terms. The matter is not *res integra*. It has been considered by the Supreme Court in *Nachana's case*, (*supra*). While rejecting the contention that Art. 14 of the Constitution was violated, the court observed (pp. 115-117) :

"8. The contention that Art. 14 is infringed arises on the provision of sub-sec. (2-C) of Sec. 48 that any rule made under clause (cc) of sub-sec. (2) of that section touching the terms and conditions of service of the employees of the Corporation shall have effect notwithstanding anything contained in the Industrial Disputes Act, 1947. It is true that after rules are made regarding the terms and conditions of service, the right to raise an industrial dispute in respect of matters dealt with by the rules will be taken away and to that extent the provisions of the Industrial disputes Act will cease to be applicable. It was argued that there was no basis on which the employees of the Corporation could be said to form a separate class for denying to them the protection of the Industrial Disputes Act. The reply on behalf of the Union of India and the Life Insurance Corporation was that the remuneration that was being paid to Class III and Class IV employees of the Corporation was far in excess of what was paid to similarly situated employees in other establishments in the public sector. Some material was also furnished to support this claim though they were certainly not conclusive. The need for amending the Life Insurance Corporation Act, 1956 as appearing from the Preamble of the Amendment Act and the Ordinance is as follows :

"... for securing the interest of the Life Insurance Corporation of India and its policy-holders and to control the cost of administration, it is necessary that revision of the terms and conditions of service applicable to the employees and agents of the Corporation should be undertaken expeditiously." Referring to the preamble of the Act the Attorney-General appearing for the Union of India and the Corporation submitting that the problem of mounting cost of administration led to the making of the impugned law. He added that it was felt that no improvement in the situation was possible by the process of adjudication and a policy decision was taken that in the circumstances the proper course was legislation and that is why the Amendment Act was passed and the impugned rules were framed. The learned Attorney-General submitted that it was for Parliament to decide whether the situation was remediable by adjudication or required legislation. According to him the Life Insurance Corporation Act as

amended and the rules made after amendment placed the Corporation in the same position as other undertakings, that the advantages being enjoyed by the employees of the Corporation which were not available to similarly situated employees of other undertakings have been taken away removing what he described as discrimination in favour of the employee of the Life Insurance Corporation. We have already said tat the material produced on behalf of the Union of India and the Corporation to show that the terms and conditions of service of the employees in several other undertakings in the public sector compared unfavourably to those of the Corporation employees was not conclusive. But the burden of establishing hostile discrimination was on the petitioners who challenged the Amendment Act and the Rules. It was for them to show that the employees of the Life Insurance corporation and the employees of the other establishments to whom the provisions of the Industrial disputes Act were applicable were similarly circumstanced to justify the contention that by excluding the employees of the Corporation from the purview of the Industrial Disputes Act they had been discriminated against.

In the instant case Sec. 48(2C) read with Sec. 48(2)(cc) authorises the Central Government to make rules to carry out the purposes of the Act notwithstanding the Industrial Disputes Act or any other law. This means that in respect of the matters covered by the rules provision of the Industrial Disputes Act or any other law will not be operative."

52. After the said pronouncement is unmistakable terms, how can there be any doubt whether Sec. 25J of the Industrial Disputes Act will prevail over the provisions of the Life Insurance Corporation Act in so far as the rules relating to the terms and conditions of service of the employees and agents of the L.I.C. are concerned ?

53. It is well settled that the expression "terms and conditions of service" includes "tenure of service" Vide : Dr. D.C. Saxena Vs. State of Haryana and Others, . Hence, Sec. 25J of the Industrial Disputes Act is repealed with reference to matters covered by the rules referred to in Sec. 48(2C) of the Life Insurance Corporation Act.

54. We shall now refer briefly to the rulings cited by Mr. Singaravelan and point out the inapplicability of the same to this case. In The Dominion of India and Another Vs. Shrinbai A. Irani and Another, , the Court had to construe Sec. 3 of the Government of India Ordinance 19 of 1946 which provided for continuation of lands requisitioned under the Defence of India Act and the rules made thereunder to be subject to requisition until the expiry of the Ordinance notwithstanding the expiration of the said Act and Rules. The Court set out the principle of construction of non obstante clause when the language of the enactment was clear in the following words :

"10. While recognising the force of this argument it is however necessary to observe that although ordinarily there should be a close approximation between

the non obstante clause and the operative part of the section, the non obstante clause need not necessarily and always be extensive with the operative part, so as to have the effect of cutting down the clear terms of an enactment. If the words of the enactment are clear and are capable of only one interpretation on a plain and grammatical construction of the words thereof, a non obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the Legislature by way of abundant caution and not by way of limiting the ambit and scope of the operative part of the enactment. Whatever may have been the presumed or the expressed intention of the legislating authority when enacting Ordinance 19 of 1946 the words of Clause 3 read along with the definition of the requisitioned land contained in Clause 2 (3) of the Ordinance are quite clear and it would not be within the province of the Courts to speculate as to what was intended to be covered by Clause 3 of the Ordinance when the only interpretation which could be put upon the terms thereof is that all requisitioned lands, that is, all immovable properties which when the Defence of India Act, 1939 expired were subject to "any" requisition effected under the Act and the Rules were to continue to be subject to requisition until the expiry of the Ordinance."

It is not known how the passage helps the petitioners in this case. Language of Sec. 48 of the Life Insurance Corporation of India Act is clear enough and the terms thereof are not cut down by the non obstante clause in sub-sec. (2C).

55. In *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, , the Supreme Court held that in cases of conflict between a specific provision and a general provision, the former prevails over the latter. That universal rule has no hearing in this case. In *Maharaja Pratap Singh Bahadur Vs. Thakur Manmohan Deo and Others*, , the Court held that a general later law does not abrogate an earlier special law by mere application. When there is a specific provision for such abrogation as in this case, the general principle has no application. In *J.K. Steel Ltd. Vs. Union of India (UOI)*, , it was held that Acts in *pari materia* must be taken together as forming one system and as interpreting and enforcing each other. The two Acts with which we are concerned cannot by any stretch of imagination be said to be Acts in *pari materia*. In *Mumbai Kamgar Sabha v. Abdulbhai* 1976 II LLJ 86 the Court had to construe some sections of the Payment of Bonus Act. It was held that where two judicial choices are available, the construction in conformity with the social philosophy of Part IV of the Constitution has preference. In the present case, there is no question of two choices.

56. The ruling in *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, that the rule of master and servant in its original absolute form is not applicable to persons in public employment to whom Arts. 14, 15, 16 and 311 of the Constitution of India are available, has no relevance to this case as nobody is

invoking the said rule of master and servant in this case. Nor does the judgment of the apex court in *Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others*, , under the Tamil Nadu Land Reforms and Fixation of Ceiling on Land Act, 1961 help the petitioners herein. The principle that in the case of welfare legislations, the Courts should adopt goal-oriented approach has no bearing here as the terms of Sec. 48 of the Life Insurance Corporation Act are unequivocal and do not admit of any other construction.

57. The judgment in *Union of India (UOI) and Another Vs. G.M. Kokil and Others*, is really against the petitioners. The relevant passage is as follows (pp. 23-24) :

"... It is known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. Thus the non obstante clause in Sec. 70, namely, "notwithstanding anything in that Act" must mean notwithstanding anything to the contrary contained in that Act and as such it must refer to the exempting provisions which would be contrary to the general applicability of the Act. In other words, as all the relevant provision of the Act are made applicable to a factory notwithstanding anything to the contrary contained in it, it must have the effect of excluding the operation of the exemption provisions. Just as because of the non obstante clause the Act is applicable even to employees in the factory who might not be "workers" under Sec. 2(2), the same non obstante clause will keep away the applicability of exemption provisions qua all those working in the factory. The Labour Court, in our view, was, therefor, right in taking the view that because of the non obstante clause Sec. 64 read with Rule 100 itself would not apply to the respondents and they would be entitled to claim overtime wages under Sec. 59 of that Act read with Sec. 70 of the Bombay Shops and Establishments Act, 1948."

58. Similarly, the principles laid down in *Ajay Kumar v. Union of India* 1984 I LLJ 68, are against the petitioners. It is worthwhile referring to the following passages (p. 383) :

"The general rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied :

(i) The two are inconsistent with each other.

(ii) There is some express reference in the later to the earlier enactment.

If either of these two conditions is fulfilled, the later law, even though general, would prevail. From the text and the decision, four tests are deducible and these are : (i) The legislature has the undoubted right to later a law already promulgated through subsequent legislation, (ii) A special law may be altered, abrogated or repealed by a later general law by an express provision, (iii) A later

general law will override a prior special law if the two are so repugnant to each other that they cannot co-exist even though no express provision in that behalf is found in the general law, and (iv) It is only in the absence of a provision to the contrary and of a clear inconsistency that a special law will remain wholly unaffected by a later general law. See in this connection, Maxwell on "The Interpretation of Statutes". Twelfth Edition, pages 196-198."

59. The judgment in Chandavarkar Sita Ratna Rao v. Ashalate AIR 1987 S.C. 177, is also against the petitioners. Paragraphs 62, 68 and 69 of the judgment read thus :

"62. If the view of the Full Bench of the Bombay High Court is to be given effect to, then it will defeat the purpose of the non obstante clause in Sec. 15A of the Act. The rule of construction is to give effect to the intention of the legislature to amend what is actually expressed where the language is plain and admits of one meaning, the task of interpretation can hardly be said to arise. Here, in this case it is possible to give effect to the literal construction, nothing has been shown to warrant that such literal construction should not be given effect to. The words of a statute must prima facie be given their ordinary meaning. See Nokee v. Doncaster Amalgamated Collieries Ltd., 1940 A. C. 1014 , where the grammatical construction is clear and manifest and without doubt that construction ought to prevail unless there are some strong and obvious reasons to the contrary. In this case there is none.

68. A clause beginning with the expression "notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract" is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict and overriding effect over the provisions of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provisions of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provision embraced in the non obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another, :

69. It is well settled that the expression "notwithstanding" is in contradistinction to the phrase "subject to", the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject. This will be clarified in the instant case by comparison of sub-sec. (1) of Sec. 15 with sub-sec. (1) of sec. 15-A. We are therefore unable to accept with respect, the view expressed by the Full Bench of the Bombay High Court as relied on by the learned single Judge in the judgment under appeal."

60. In Krishna District Co-operative Marketing Society Limited, Vijayawada Vs. N.V. Purnachandra Rao and Others, the Court had to consider a conflict between

a Central Act and a State Act. It was held that the former prevailed. It has no bearing on this case. Reliance is placed on the following passage in the judgment in *Chern Taong Shang and Others Vs. Commander S.D. Baijal and Others*, :

"It is pertinent to mention that in interpreting a statute the Court has to ascertain the will and policy of the legislature as discernible from the object and scheme of the enactment and the language used therein."

We do not know how it helps the petitioners in this case when the language of the section is unambiguous.

61. In *All India Reporter Karamchari Sangh and Others Vs. All India Reporter Limited and Others*, , the Court holding that working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act (45 of 1955) was a beneficial legislation and observed thus : (p. 558)

"19. The Act in question is a beneficial legislation which is enacted for the purpose of improving the conditions of service of the employees of the newspaper establishments and hence, even if it is possible to have two opinions on the construction of the provisions of the Act, the one which advances the object of the Act and is in favour of the employees for whose benefit the Act is passed has to be accepted."

As already stated, there is no question of two constructions being available in this case. Only one construction is possible here. Hence, the ruling does not apply.

62. In *Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others*, a question arose with reference to the provisions of the Delhi Rent Control Act and the Public Premises (Eviction of Unauthorised Occupants) Act (40 of 1971). The relevant principles of interpretation are set out in the following passages :

"49. This means that both the statutes, viz., the Public Premises Act and the Rent Control Act, have been enacted by the same legislative powers in respect of the matters enumerated in the Concurrent List. We are, therefore, unable to accept the contention of the learned Additional Solicitor General that the Public Premises Act, having been enacted by Parliament in exercise of legislative powers in respect of matters enumerated in the Union List would ipso facto override the provisions of the Rent Control Act enacted in exercise of the legislative powers in respect of matters enumerated in the Concurrent List. In our opinion the question as to whether the provisions of the Public Premises Act override the provisions of the Rent Control Act will have to be considered in the light of the principles of statutory interpretation applicable to laws made by the same legislature.

50. On such principle of statutory interpretation which is to be applied is contained in the Latin maxim : *leges posteriores priores contraries abrogant* (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim : *generalia specialibus non derogant* (a

general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion Statutory Interpretation (pp. 433-34)).

In other words, both the enactments, namely the Rent Control Act and the Public Premises Act, are special statutes in relation to the matters dealt with therein. Since, the Public Premises Act is a special statute and not a general enactment, the exception contained in the principle that a subsequent general law cannot derogate from an earlier special law, cannot be invoked and in accordance with the principle that the latter laws abrogate earlier contrary laws, the Public Premises Act must prevail over the Rent Control Act."

There is nothing in the above passages referred to by learned counsel to support his contention in the present case. Nor does any other passage in the judgment help him.

63. The last of the decisions cited in this regard is that of the Supreme Court in *R.S. Raghunath Vs. State of Karnataka* and another, . Our attention is drawn to paragraph 15 of the judgment, in which it is observed that a later statute may repeal an earlier one either expressly or by implication and the Courts have not favoured such repeal by implication. It was also observed in that case that if earlier and later statutes can reasonably be construed in such a way that both can be given effect to, the same must be done. That ruling also does not support the extreme contention of learned counsel for the petitioners. Thus, none of the rulings relied on by him helps him in this case.

64. Another argument advanced by learned counsel which, in our opinion, is one in despair, is that the L.I.C. is estopped from contending that the provisions of the Industrial Disputes Act do not apply. According to him, such an objection was not raised when references were made to the National Tribunals under N.T.B. 1 of 1985 and N.T.B. 1 of 1987. It was argued that both the references were long after the amendment of the Life Insurance Corporation Act and no objection was raised by the L.I.C. as to the applicability the provisions of the Industrial Disputes Act, with the result that it is estopped in the present case from contending to the contrary. Reference was made to a judgment in the *State of Punjab v. Jagdip Singh*, 1966 - I - LLJ - 749. There is no substance in the contention. It is too well settled that there can be no estoppel against a statute. The fact that the L.I.C. did not object to the dispute being decided by the National Tribunals on the earlier occasions would not prevent them from raising a contention that the applicability of the Industrial Disputes Act is excluded from the field occupied by Sec. 48(2C) of the Life Insurance Corporation Act. The ruling cited has no relevance whatever to the question. That was a case in which supernumerary posts of Tahsildars were created by the Rajpramukh of Pepsu to provide liens for the Tahsildars who were confirmed as such, when no posts were

available for confirmation. After the merger of the State of Pepsu with the State of Punjab by virtue of the operation of the States Reorganisation Act, 1956, the successor Government cancelled the previous order of confirmation, the validity of which was challenged and which was upheld by the Supreme Court holding that Art. 311(2) of the Constitution of India would not apply to the case and the earlier orders of confirmation were wholly void. It was also held that the creation of supernumerary posts was of no avail as a means of validating the original order of confirmation. That ruling has nothing to do whatever with the principle of estoppel now advanced by learned counsel.

65. Mr. Chandru, counsel for the petitioners in the later batch, did not take the extreme stand taken by the other counsel. He pointed out that the L.I.C. is expressly governed by the Industrial Disputes Act by referring to the definition of "appropriate Government" in Sec. 2(a) of the Act. The definitions of "Insurance Company" and "Industry" in Sec. 2(kk) and Sec. 2(j) of the Industrial Disputes Act also prove that L.I.C. is not excluded from the purview of the Industrial Disputes Act. According to him, the effect of the Life Insurance Corporation (Amendment) Act, 1981 is only to nullify the bargaining power of the employees in financial matters. It was argued that "terms and conditions of service" could only refer to salary, bonus and other financial matters. We are unable to accept this part of his argument. We have already pointed out that "terms and conditions of service" would include tenure of service. It was next argued that an industrial dispute could be raised with reference to matters other than "terms and conditions of service." Our attention was drawn to the following observation of the Supreme Court in Bahadur's case (1981 - I - LLJ - 1)

"... the meat of the statute is industrial dispute, not conditions of employment or contract of service as such."

It was contended that the machinery constituted under the Industrial Disputes Act was available for adjudication of disputes between the workers and the L.I.C. Learned counsel submitted that the question whether the L.I.C. had adopted unfair labour practice as defined by the Industrial Disputes Act could be raised and canvassed before the industrial forum. According to learned counsel, Sec. 25J of the Industrial disputes Act will come into play in matters other than those covered by Sec. 48(2C) of the Life Insurance Corporation Act. He submitted that the Life Insurance Corporation (Amendment) Act of 1981 left untouched the provisions of Sec. 48(2)(j) of the principal Act, which enabled the Central Government to make rules with reference to the "conditions subject to which the Corporation may appoint employees". He pointed out that inspite of the introduction of clause (cc) to sub-sec. (2) of Sec. 48 relating to the terms and conditions of service of the employees and agents of the L.I.C., by the Amendment Act, clause (j) of the sub-section was retained. According to him, Sec. 48(2-C) is confined only to the provisions of clause (cc) and sub-sec. (2-B) and it is not applicable to clause (j). It was, therefore, argued that whatever is not covered by sub-sec (2C) falls under clause (j) of sub-sec (2) and would be hit

by Sec. 25J of the Industrial Disputes Act. It was also his contention that the petitioners would be entitled to enforce the provisions of Sec. 25F of the Industrial Disputes Act before the authorities constituted under that Act.

66. Sri. M. R. Narayanaswamy, learned senior counsel for the L.I.C., argued that after the Amendment Act of 1981, all terms and conditions of service of the employees and agents of the L.I.C. are governed only by the rules and regulations and the provisions of the life Insurance corporation Act. He drew our attention to Secs. 11(4), 23, 48 and 49 of the said Act. Sec. 11(4) contains a non obstante clause with reference to employees whose services are transferred from an insurer to the L.I. C. Sec. 23 thereof reads as "the Corporation can employ such number of persons as it thinks fit for the purpose of enabling it to discharge its functions under the Act" and every employees of the L.I.C. shall be liable to serve anywhere in India. The relevant parts of Secs. 48 and 49 thereof have already been referred to by us. Before the amendment of 1981, Sec. 49 empowered the L.I.C. to make regulations providing for the terms and conditions of service of the employees and agents. Sub-sec. 2(b) was in the following terms :

(2) In particular, and without prejudice to the generally of the foregoing power, such regulations provide for -

(a)---

(b) the method of recruitment of employees and agents of the Corporation and the terms and conditions of service of such employees or agents."

Sub-sec. 2(bb) introduced by Act 17 of 1957 read thus :

"(bb) the terms and conditions of service of persons who have become employees of the Corporation under sub-sec. (1) of Sec. 11."

The Amendment Act of 1981 omitted the words "and the terms and conditions of service of employees or agents" in clause (b) and omitted the entirety of clause (bb), obviously because provision has been made therefore in clause (cc) of sub-sec. (2) of Sec. 48. Thus, the power to prescribe rules for the terms and conditions of service of the employees, is transferred to the Central Government by the amendment from the L.I.C. However, the method of recruitment of employees and agents of the L.I.C. is left in its control and it can make Regulation therefor.

67. Strong reliance is placed by learned Senior Counsel on the following two passages found in the judgment of the Supreme Court in A.V. Nachane and Others Vs. Union of India (UOI) and Another, :

"It is true that after rules are made regarding the terms and conditions of service, the right to raise an industrial dispute in respect of matters dealt with by the rules will be taken away and to that extent the provisions of the Industrial Disputes Act will cease to be applicable.

This means that in respect of the matters covered by the rules the provisions of the Industrial Disputes Act or any other law will not be operative."

Learned Senior Counsel, however, with his usual fairness, brought to our notice the latest ruling of the Supreme Court in the National Life Insurance Employees Association (INTUC) v. L.I.C. of India and others, (S.L.P. (C) No. 974 of 1992). That was a case in which the order of the Patna High Court was reversed. The L.I.C. filed writ petitions before the Patna High Court challenging the initiation of a conciliation proceeding by the Regional Labour Commissioner (Central) under the Industrial Disputes Act on a dispute raised by an association of the employees. Some directions in the course of conciliation proceedings were also challenged. An argument was advanced by learned counsel for the Association that sub-sec. (2C) of Sec. 48 of the Life Insurance Corporation Act meant that no dispute could be raised relating to the criteria for the promotions and in that regard, the provisions of the rules governing the L.I.C. must prevail; but the provisions of sub-sec. (2C) would not bar the raising of an industrial dispute to the limited extent that the L.I.C. was making promotions in violation of the said rules. The Patna High Court held that the said contention was contrary to the observations of the Supreme Court in A. V. Nachana v. Union of India, (supra). The first of the passages referred to above was relied on by the High Court. In that view, the writ Petitions filed by the L.I.C. were allowed. On appeal, the Supreme Court by its order dated February 17, 1992 reversed the conclusion of the Patna High Court on the following reasoning :

"Mr. Rao for respondents relied upon the decision of this Court in A.V. Nachane and Others Vs. Union of India (UOI) and Another, , to contend that since the rules are made on the subject, the Industrial Disputes Act will not be applicable to the present dispute raised by the petitioner. We are of the view that the observations made in the case cited by Shri Rao have been made in connection with the subject matter covered by the rules. They have no application to the present dispute which relates to the violation of the rules made on the subject. Hence the adjudicating machinery under the Industrial Disputes Act will have jurisdiction over the present dispute. In this view of the matter, the appeal has to be allowed which is, accordingly, allowed. We make it clear that this order has no reflection whatsoever on the merits of the dispute. The conciliation officer will proceed with the dispute according to law."

68. Mr. Chandru brought to our notice that the instance of the Trade Union of the employees, the Central Government has once again referred the dispute raised by them for adjudication to the Central Government Industrial Tribunal, New Delhi. A specific reference was made in the affidavit filed in support of the W.P. No. 18565 of 1991 in paragraph 9 to the said reference. A xerox copy of the order dated March 4, 1991 made by the Central Government was produced before us. It is in the following terms :

"No. L. 17011/107/90-1R-B (II) : Whereas the Central Government is of the opinion that an industrial dispute exists between the employers in relation to the

management of life Insurance Corporation of India and their workmen in respect of the matters specified in the schedule hereto annexed.

AND whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the power conferred by Clause (d) of sub-sec. (1) and sub-sec. (2A) of Sec. 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal, New Delhi. The said Tribunal shall give its award within a period of six months.

The Schedule : "Whether the action of the management of Life Insurance Corporation of India in not absorbing Badli/temporary and part time workmen employed in the establishment of L.I.C. after May 20, 1985 is justified ? If not, to what relief the workmen are entitled ?"

69. It is seen from the said copy that the reference is wide enough to cover all the badli/temporary and part time workmen of the L.I.C. throughout the country. Copies of the order have been forwarded to several associations of the employees in different parts of the country as well as several individuals for necessary action. Mr. Singaravelan submitted that when his clients approached the Government for making a reference, their application was turned down and they were not aware of the reference made by the order dated March 4, 1991. According to him, his clients are not parties to the reference and they would prefer to have their rights determined by this Court. We see no substance in his submission. Sec. 10(5) of the Industrial Disputes Act enables the appropriate Government to include in a reference at any time after the reference but before the submission of the award, such establishment, group class of establishment whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group of class of establishments, if the Government is of opinion that the dispute is of such a nature that such establishments are likely to be interested in or affected by the dispute. There is no bar to the employees who are represented by Mr. Singaravelan to get themselves included in the reference now pending before the Central Government Industrial Tribunal, New Delhi. It is stated that so far no progress has been made in the reference and the adjudication process has not yet started.

70. It was submitted by Mr. Chandru that the L.I.C. has not so far raised any question as to the competence of the Tribunal to decide the dispute. Counsel appearing for the Corporation disputed that statement. Whatever may be the position, it is for the Tribunal to decide the question of competence also, if raised before it. We have already pointed out that the applicability of the provisions of the Industrial disputes Act is extended only to the extent to which the rules covered by Sec. 48(2C) of the Life Insurance Corporation Act applied. The latest pronouncement of the Supreme Court also shows that the Tribunals constituted under the Industrial Disputes Act are entitled to consider the claims relating to

violation of the rules. Hence, we are not deciding here the question whether the petitioners are entitled to the benefits claimed by them. It is for the Tribunal before which a reference is already pending to decide the dispute. Thus, on this question, while holding that the applicability of the Industrial Disputes Act is excluded from the field covered by Sec. 48(2C) of the Life Insurance Corporation Act, we direct the parties to agitate their claims before the Central Government Industrial Tribunal, New Delhi, where a reference is already pending.

71. IX. Unfair labour practice. : The expression "Unfair labour practice" has been defined by Sec. 2(ra) of the Industrial Disputes Act as any of the practices specified in the Fifth Schedule. Part I of the Fifth Schedule sets out unfair labour practices on the part of the employers and trade unions of employees. Entry 10 is in the following terms :

"To employ workmen as "badli"", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."

Sec. 25T of the said Act prohibits an employer or workman or a trade union, whether registered under the Trade Unions Act or not from committing any unfair labour practice. Sec. 25U of the said Act prescribes the penalty for commission of unfair labour practices.

72. The burden of song in these writ petitions is that the L.I.C. is guilty of unfair labour practice for quite a long time from the past. Reliance is placed on the observations made by the National Tribunals in the Awards passed in the references made to them. Those observations are wholly irrelevant in this case as we are concerned only with the employment made subsequent to May 20, 1985. The National Tribunals were concerned with the period prior to May 20, 1985. Moreover, the Awards made by the Tribunals are subject matter of appeal pending before the Supreme Court and the question will have to be decided only by that Court finally with regard to the earlier period. At this state, no reliance can be placed on such observations.

73. We have already set out the relevant facts while tracing the history of the reference. It is seen therefrom that the parties were governed by the interim orders passed by the Tribunals and Court after the reference was made to the National Tribunal, 1985. The order of the Supreme Court was made on March 1, 1989. It is the case of the L.I.C. that the terms of the compromise on the basis of which the Supreme Court passed the order were implemented and employments were given. Thereafter, advertisement was issued calling for applications for Class III and Class IV Posts as prescribed by the Regulations. The advertisement was published on July 29, 1989, which happened to be a Saturday. The first of these writ petitions was filed on July 31, 1989 the very next working day. Obviously, the petitioners were only waiting for the publication of such advertisement to rush to Court and obtain interim orders. An interim order was passed on August 2, 1989. What happened thereafter, has already

been set out in this judgment. It was seen therefrom that the interim orders were being passed off and on by this Court and they had to be obeyed by the L.I.C. In fact, they had to face a proceeding for contempt on the ground that they had disobeyed one such order. In such a situation, there is considerable force in the arguments advanced by learned Senior Counsel for the L.I.C. that the charge against the L.I.C. that it has indulged in unfair labour practice is unsustainable. It is rightly pointed out by learned senior counsel that parties cannot be made to suffer for obeying orders of Court. No matters whatever has been placed before us in support of the serious allegation made by the petitioners that the L.I.C. is guilty of unfair labour practice after May 20, 1985. We hold that the said allegation has not been proved.

74. However, we add that if in the reference pending before the Central government Industrial Tribunal the employees want to establish that the L.I.C. is guilty of unfair labour practice after May 20, 1985, it is open to them to raise the necessary plea and adduce evidence in support thereof. It will be a matter in that event to be decided by the Tribunal. In so far as these writ petitions are concerned, the claim with which the petitioners came to this Court that the L.I.C. is guilty of unfair labour practice has not been proved.

75. X. Constitutionality of Sec. 2(oo)(bb) of the Industrial Disputes Act : The sub-section was introduced by Act 49 of 1984. Sec. 2(oo) of the Industrial Disputes Act defined "retrenchment". The section as it stood before the Amendment Act read thus :

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or (c) termination of the service of the workman on the ground of continued health."

By the Amendment Act, sub-clause (bb) reading thus was introduced :

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on the expiry or of such contract being terminated under a stipulation in that behalf contained therein; or."

76. When reliance was placed by the L.I.C. on sub-clause (bb) to refute the contention of the petitioners that they have been retrenched from service, some of the petitioners decided to challenge the constitutionality of the sub-clause and filed writ petitions therefor. Such petitioners are represented by Mr. Singaravelan, Advocate. In his opening argument, he did not advance any contention in this regard. Mr. Chandru, who appeared for the other petitioners, made it clear that

he was not challenging the validity of the sub-clause in these proceedings. After Senior Counsel for the L.I.C. concluded his arguments in reply, Mr. Singaravelan sought to contend that the sub-clause is unconstitutional. According to him, it violates the provisions of the Arts. 14 and 16 of the Constitution of India and is contrary to the Directive Principles of State Policy contained in Part IV of the Constitution of India. It was submitted that the objects and reasons of the Amendment Act 49 of 1984 did not reveal any purpose for the insertion of sub-clause (bb). According to him, the sub-clause defeats substantial right made available to the petitioners by Sec. 25H and the other provisions of the Industrial Disputes Act. We do not find any substance in the arguments advanced. The competence of the legislature to amend the definition of the expression "retrenchment" is not called in question. When the Industrial Disputes Act was passed in 1947, there was no definition for the said expression in the Act. Nor did the predecessor Act viz., Trade Dispute Act, 1929 contain any definition. Clause (oo) was inserted by Act 43 of 1953 with effect from October 24, 1953. In *Hariprasad v. A.D. Divolkar* AIR 1957 S.C. 121, the Constitution Bench of the Supreme Court held that the definition introduced by Clause (oo) had no wider meaning than the ordinary accepted connotation of the word. The relevant passage is as follows :

"(19). For the reasons given above, we hold, contrary to the view expressed by the Bombay High Court, that retrenchment as defined in Sec. 2(oo) and as used in Sec. 25F has no wider meaning than the ordinary, accepted connotation of the word : it means the discharge of surplus labour or staff by the employer for any reasons whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and bona fide closure of business as in the case of *Shri Dinesh Mills Ltd.*, or where the services of all workmen have been terminated by the employer on the business or undertaking being taken over by another employer in circumstances like those of the Railway Company."

77. In the *The State Bank of India Vs. Shri N. Sundara Money*, a three Judge Bench of the Supreme Court held that as per the definition of the term "retrenchment", termination of the service of workman, whatever be the reason, would amount to retrenchment unless it falls under the category of punishment by way of disciplinary action or in any of the excluded clauses (a), (b) and (c). The Bench did not make any reference to the judgment of the five Judge Constitution Bench in *Hariprasad's* case AIR 1957 S.C. 121, or the accepted connotation of the term. However, the view taken in *Sundara Money's* case (*supra*) was accepted by the later Rulings of the Supreme Court.

78. In the Statement of Objects and Reasons for the Amendment Act 49 of 1984 it is stated that "difficulties have arisen in the interpretation of the expression "retrenchment" and, therefore, it is proposed to exclude from the definition "termination of service" of a workman as a result of non-renewal of contract of

employment on its expiry and termination of contract in accordance with the provisions thereof". Thus, sub-clause (bb) was introduced in the definition clause.

79. It has been repeatedly held by the apex court that the legislature is entitled by exercise of its powers within the limits prescribed by the Constitution to remove the basis of a decision rendered by a competent Court, thereby rendering that decision ineffective. Vide *Municipal corporation of City of Ahmedabad v. The New Shock Spinning and Weaving Company Ltd.* AIR 1970 S.C. 1291. The distinction between a legislative act and a judicial act was brought out in the judgment in *I.N. Saksena Vs. State of Madhya Pradesh*, in the following passages :

"21. The distinction between a "legislative" act and a "judicial" act is well known, though in some specific instances the line which separates one category from the other may not be easily discernible. Adjudication of the rights of the parties according to law enacted by the legislature is a judicial function. In the performance of this function, the court interprets and gives effect to the intent and mandate of the Legislature as embodied in the statute. On the other hand, it is for the Legislature to lay down the law, prescribing norms of conduct which will govern parties and transaction and to require the court to give effect to that law.

22. While, in view of this distinction between legislative and judicial functions, the legislature cannot by a bare declaration, without more, directly overrule, reverse or override a judicial decision, it may, at any time in exercise of the plenary powers conferred on it by Arts. 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field fundamentally altering or changing with retrospective, curative or neutralising effect the conditions on which such decision is based. As pointed out by Ray, C.J. in *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, the rendering ineffective of judgments or orders of competent courts and tribunals by changing their basis by legislative enactment is a well known pattern of all validating Acts. Such validating legislation which removes the causes for ineffectiveness or invalidity of actions or proceedings is not an encroachment on judicial power.

22. *Hari Singh and Others Vs. The Military Estate Officer and Another*, a Bench of seven learned Judges of this Court laid down that the validity of a validating law is to be judged by two tests. Firstly, whether the legislature possesses competence over the subject matter, and, secondly, whether by validation the legislature has removed the defect which the courts had found in the previous law. To these we may add a third whether it is consistent with the provisions of Part III of the Constitution".

80. The three tests prescribed in the above ruling are satisfied in the present case. Nothing was urged before us to show how the amendment offends the provisions of Part III of the constitution of India. There is no question of the sub-clauses being invalid on the ground that it runs counter to the provisions of Secs.

25F 25G and 25H of the Industrial Disputes Act. The expression "retrenchment" used in those sections must be understood only in the way in which it is defined in Sec. 2(oo) of the Act. We have no hesitation in holding that sub-clause (bb) of Sec. 2(oo) of the Industrial Disputes Act is valid and constitutional.

81. XI. Are the petitioners retrenched employees ? : We have already held that the L.I.C. (Staff) Regulation are valid and applicable to the petitioners. We have also referred to the fact that the petitioner were appointed temporarily under Regn. 8. We have held that the provisions of the Industrial Disputes Act are excluded to the extent covered by the Regulations. It follows automatically that the petitioners who are governed by Regn. 8. cannot claim to have been retrenched as defined by the Industrial Disputes Act. They cannot invoke the provisions relating to retrenched employees. It was argued that the work for which the petitioners were recruited continued to exist and the termination of service at the expiry of the contractual periods was nothing but retrenchment as defined by Sec. 2(oo) of the Industrial Disputes Act. Reliance was placed on some decisions including one of this Court in K. Rajandran v. Director P. & H. Corpn. of India Ltd., New Delhi, 1992 L I.C. 909, which turned on the interpretation of Sec. 2(cc) after the introduction of sub-clause (bb). We do not wish to express our views on the correctness of the view taken in these rulings. They have no application in this case, as the petitioners are governed by Regulation 8 of the Life Insurance Corporation of India (Staff) Regulations. Hence, we hold that the petitioners are not retrenched employees.

82. By way of summing up, our conclusions are as follows :

- (1) The Life Insurance Corporation (Staff) Regulations, 1960 are valid and they are applicable to the petitioners.
- (2) The provisions of the Industrial Disputes Act are not applicable to the petitioners with reference to matters covered by Sec. 48(2C) of the L.I.C. Act.
- (3) It is not proved that L.I.C. is guilty of unfair labour practice. It is open to the petitioners to raise the plea and prove it before the Central Government Industrial Tribunal, New Delhi, where a reference is already pending.
- (4) Sec. 2(oo)(bb) of the Industrial Disputes Act is constitutional valid.
- (5) The petitioners are not retrenched employees as they are governed by Regn. 8 of the L.I.C. of India (Staff) Regulations.

83. Counsel for the petitioners submitted that as an interim measure, orders should be passed by this Court enabling the petitioners to continue in service till they obtain appropriate interim orders from the Central Government Industrial Tribunal, New Delhi. We are not inclined, on the facts and circumstances of this case, to pass any such order. We have already pointed out that the first of these writ petitions was filed on the very next working day after the L.I.C. published an advertisement calling for applications. At that time, the petitioners therein had not put in a total service of even 200 days. In fact, only a few of them had been

in service for over 150 days, but less than 200 days and that too, in different periods and not continuous. Most of them had worked only for less than 90 days. The petitioners cannot take advantage of the period during which they had been in service pursuant to the interim orders of this Court and claim that they should be allowed to continue in service till they move the Industrial Tribunal. Even as early as on November 29, 1990, the judgment in W.P. No. 4907 of 1990 rendered by one of us had pointed out that the remedy of the employees was to take appropriate steps under the Industrial Disputes Act. Yet, the employees association continued to file writ petition after writ petition in this Court taking their chances before different learned Judges who were in charge of writ petitions at different times. A reference has been made to the Central Government Industrial Tribunal in March, 1991. If the employees were interested, they could have approached the Tribunal long back and obtained appropriate directions. After the division Bench heard arguments in detail and reserved judgment on September 6, 1991, a spate of writ petitions has been filed and invariably reliance is placed upon the fact that the petitioners therein had worked for long numbers of days, over and above the requisite period of 240 days. But, obviously, they were able to be in service because of the interim orders of this Court. In such a situation, we see no warrant to grant any relief as an interim measure, while we have taken the view that the merits of the claim made by the petitioners are to be decided only by the Industrial Tribunal. Hence, we refuse to pass orders as prayed for by the petitioners.

84. In the result, the writ petitions are dismissed. There will be no order as to costs.