

A.V. Nachane and ors. Vs. Union of India (Uoi) and anr.

A.V. Nachane and ors. Vs. Union of India (Uoi) and anr.

SooperKanoon Citation : sooperkanoon.com/650771

Court : Supreme Court of India

Decided On : Dec-28-1981

Reported in : AIR1982SC1126; (1982)ILLJ110SC; (1982)1SCC205; [1982]2SCR246

Judge : A.C. Gupta,; R.S. Pathak and; O. Chinnappa Reddy, JJ.

Acts : Life Insurance Corporation (Amendment) Act, 1981 - Sections 48(2), 48(2C) and 48(3); Life Insurance Corporation of India Class III and Class IV Employees (Bonus and Dearness Allowance) Rules 1981; [Constitution of India](#) - Articles 14, 19(1), 21 and 32

Appeal No. : Writ Petition Nos. 501, 643-644, 645, 649 and 1866 of 1981

Appellant : A.V. Nachane and ors.

Respondent : Union of India (Uoi) and anr.

Advocate for Pet/Ap. : P.H. Parekh,; Somnath Chatterjee,; J. Ramamurthi and;

Judgement :

A.C. Gupta and R.S. Pathak, JJ.

1. The validity of the provisions of the Life Insurance Corporation (Amendment) Act, 1981 and the Life Insurance Corporation (Amendment) Ordinance, 1981 which preceded it is challenged in this batch of writ petitions. The writ petitions

have a history behind them which can be conveniently divided into three chapters. However, it will be easier to follow this history if we refer to some of the provisions of the Life Insurance Corporation Act, 1956 first. The Life Insurance Corporation 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 the Life Insurance Corporation of India. Under Section 11(1) of the Act the services of the employees of insurers whose business has vested in the Corporation are transferred to the Corporation. Sub-section (2) of Section 11 provides:

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

There is an explanation to this Sub-section which is not relevant for the present purpose, Section 48 of the Act empowers the Central Government to make rules to carry out the purposes of the Act. Sub-section (2) of Section 48 in Clauses (a) to (m) specifies some of the matters that the rules may provide for. Sub-section (3) of Section 48 states:

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 modification 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.

Section 49(1) empowers the Life Insurance Corporation of India to make regulations to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of the Act. Clauses (a) to (m) of Sub-section (2) of Section 49 specify some of the matters the regulations may provide for. The matter referred to in Clause (b) of Sub-section (2) is 'the method of recruitment of employees and agents of the Corporation and the terms and conditions of service of such employees or agents.' Clause (bb) speaks of the terms and conditions of service of persons who have become employees of the Corporation under Sub-section (1) of Section 11.

2. Turning now to the history of the litigation, the first chapter begins with two settlements reached on Jan. 24, 1974 and Feb. 6, 1974 between the Life Insurance Corporation and its Class III and Class IV employees. These were settlements under Section 18 read with Section 2(p) of the Industrial Disputes Act, 1947. The settlements were identical in terms; four of the five unions of workmen subscribed to the first settlement while the remaining union was a signatory to the second. The settlements cover a large ground including the claim for bonus. Clause 8 of each of the settlements was as follows:

Bonus:

(i) No profit sharing bonus shall be paid. However, the Corporation may, subject to such directions as the Central Government may issue from time to time, grant, any other kind of bonus to its Class III and IV employees.

(ii) An annual cash bonus will be paid to all Class III and Class IV employees at the rate of 15% of the annual salary (i.e. basic pay inclusive of special pay, if any, and dearness allowance and additional dearness allowance) actually drawn by an employee in respect of the financial year to which the bonus relates.

(iii) Save as provided herein all other terms and conditions attached to the admissibility and payment of bonus shall be as laid down in the settlement on bonus dated the 26th June, 1972.

Clause 12 of the settlement inter alia provides:

This settlement shall be effective from 1st April, 1973 and shall be for a period of four years, i.e. from 1st April 1973 to 31st March 1977.

In 1975 an Ordinance was promulgated called the Payment of Bonus (Amendment) Ordinance which was subsequently replaced by the Payment of Bonus (Amendment) Act, 1976. The reference to this ordinance and the Act would not have been relevant because Section 32(i) of the original Payment of Bonus Act, 1965 made the said Act not applicable to the employees of the Life Insurance Corporation, but the Central Government appears to have decided also that the employees of establishments not covered by the Payment of Bonus Act would not be eligible to get bonus and ex-gratia cash payment in lieu of bonus would be made. Accordingly payment of bonus for the year 1975-76 to the employees of the Corporation was stopped under instructions from the Central Government. On a writ petition filed by the employees of the Corporation in the Calcutta High Court, a single Judge of that court issued a writ of mandamus directing the Corporation to act in accordance with the terms of the settlement. Thereafter the Life Insurance Corporation (Modification of Settlement) Act, 1976 was passed. Some of the employees of the Corporation challenged the constitutional validity of the Act by filing writ petition in this Court. In *Madan Mohan Pathak v. Union of India* : (1978)ILLJ406SC . This Court held that the 1976 Act offended Article 31(2) of the Constitution and was as such void and issued a writ of mandamus directing the Union of India and the Life Insurance Corporation to forbear from implementing or enforcing the provisions of the 1976 Act and to pay annual cash bonus for the years 1st April 1975 to 31st March 1976 and 1st April 1976 to 31st March 1977 to

Class III and Class IV employees in accordance with the terms of the settlements.

3. The second chapter began on Mar. 31, 1978 when the Corporation issued a notice under Section 19(2) of the Industrial Disputes Act declaring its intention to terminate the settlements on the expiry of the period of two months from the date the notice was served. On the same day another notice was issued by the Corporation under Section 9A of the Industrial Disputes Act stating that it proposed to effect a change in the conditions of service applicable to the workmen. The change proposed was set out in the annexure to the notice which reads:

AND WHEREAS for economic and other reasons it would not be possible for the Life Insurance Corporation of India to continue to pay bonus on the aforesaid basis;

Now, therefore, it is our intention to pay bonus to the employees of the Corporation in terms reproduced hereunder:

No employee of the Corporation shall be entitled to profit sharing bonus. However, the Corporation may, having regard to the financial condition of the Corporation in respect of any year and subject to the previous approval of the Central Government, grant non-profit sharing bonus to its employees in respect of that year at such rate as the Corporation may think fit and on such terms and conditions as it may specify as regards the eligibility of such bonus.'

The notices were followed by a notification issued by the Corporation under Section 49 of the Life Insurance Corporation Act on May 26, 1978 substituting a new regulation for the existing Reg. No. 58 of the Staff Regulations. Simultaneously the Life Insurance Corporation (Alteration of Remuneration and other Terms and Conditions of Service of Employees) Order, 1957, called the Standardisation Order, made by the Central Government in exercise of the powers conferred on it by Section 11(2) of the Life Insurance Corporation Act was amended with effect from June 1, 1978 substituting a new Clause (9) for the original clause concerning bonus. Clause (9) of the Standardisation Order and Reg. 58 of the Staff Regulations after amendment read as follows:

No employee of the Corporation shall be entitled to profit-sharing bonus. However, the Corporation may, having regard to the financial condition of the Corporation in respect of any year and subject to the previous approval of the Central Government grant non-profit sharing bonus to its employees in respect of that year at such rate as the Corporation may think fit and on such terms and conditions as it may specify as regards the eligibility for such bonus.

The validity of the said two notices and the notification issued for the purpose of nullifying any further claim of the workmen to annual cash bonus in terms of the Settlements of 1974 was challenged by the workmen by filing a writ petition in the Allahabad High Court. The High Court allowed the writ petition and the Corporation preferred an appeal to this Court. Another writ petition which had been filed in the Calcutta High Court challenging the said notices and the notification was transferred to this Court, and the appeal and this writ petition were heard and disposed of by a common judgment. The two cases were Civil Appeal No. 2275 of 1978 : (Life Insurance Corporation of India v. D.J. Bahadur : (1981)ILLJ1SC and Transfer Case No. 1 of 1979 : (Chandrashekhar Bose v. Union of India : (1981)ILLJ1SC). By a majority the appeal preferred by the Corporation was dismissed and the transfer petition was allowed and a writ was issued by this Court to the Life Insurance Corporation directing it 'to give effect to the terms of the settlements of 1974 relating to bonus until superseded by a fresh settlement, an industrial award or relevant legislation.' The second chapter closed with this decision.

4. The third chapter begins with the promulgation of the Life Insurance Corporation (Amendment) Ordinance, 1981 on Jan. 31, 1981. The following changes made in the principal Act by the Ordinance are material. In Sub-section (2) of Section 48 of the principal Act a new Sub-clause (cc) was inserted with retrospective effect from June 20, 1979. Clause (cc) relates to 'the terms and conditions of service of the employees and agents of the Corporation including those who became employees and agents of the Corporation on the appointed day under this Act.' Three new Sub-sections (2A), (2B) and (2C) were added to Section 48. Sub-section (2A) says that the regulations and other provisions as in force immediately before the commencement of the Ordinance with respect to the terms and conditions of

service of the employees and agents of the Corporation shall be deemed to be rules made under Clause (cc) of Sub-section (2). Sub-section (2B) provides that the power to make rules under Clause (cc) of Sub-section (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-section (2A) with retrospective effect, but not from a date earlier than June 20, 1979. Sub-section (2C) reads as follows:

The provisions of Clause (cc) of Sub-section (2) and Sub-section (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 or any other law or any agreement, settlement, award or other instrument for the time being in force.

Certain consequential changes were also made in Section 49 of the Act. In Clause (b) of Section 49(2) which has been quoted above, the words 'and the terms and conditions of service of such employees or agents' were omitted. This was necessary because the terms and conditions of service of the employees and the agents with regard to which the Corporation was empowered to make regulations by Section 49(1) of the principal Act is now a matter included in Clause (cc) of Section 48(2) as one of the matters covered by the rule making authority of the Central Government under Section 48(1) of the Act. The ordinance also omits Clause (bb) from Section 49(2) Clause (bb) also quoted earlier included the terms and conditions of the service of the persons who had become employees of the Corporation under Section 11(1) of the Act. The terms and conditions of service of such persons are now included in the new Clause (cc) of Section 48(2).

5. By notification dated Feb. 2, 1981 the Central Government in exercise of the powers conferred by Section 48 of the Life Insurance Corporation Act, 1956 made the rules called the Life Insurance Corporation of India Class III and Class IV Employees (Bonus and Dearness Allowance) Rules, 1981. The relevant rule is Rule 3 which has been given retrospective operation from July 1, 1979, Sub-rule

(1) of Rule 3 provides:

No Class III or Class IV employee of the Corporation shall be entitled to the payment of any profit sharing bonus or any other kind of cash bonus.' Sub-rule (2) of Rule 3 states that notwithstanding what Sub-rule (1) provides every Class III and Class IV employee shall be entitled to a payment in lieu of bonus - (a) for the period commencing from July 1, 1979 and ending on Mar. 31, 1980 at the rate of 15 per cent of his salary; and (b) thereafter for every year commencing on the 1st April and ending on the 31st day of March of the following year, at such rate and subject to such conditions as the Central Government may determine having regard to the wage level, the financial circumstances and other relevant factors. There is a proviso to this Sub-rule which says that (i) no payment in lieu of bonus shall be made to any employee drawing a salary exceeding Rs. 1,600/- per month; and (ii) where the salary of an employee exceeds Rs. 750/- per month but does not exceed Rs. 1,600/- per month, the maximum payment to him in lieu of bonus shall be calculated as if his salary were Rs. 750/- per month. For the purposes of this Sub-rule, 'salary' was explained as meaning basic pay, special pay, if any, and dearness allowance. Sub-rule (3) of Rule 3 rescinds Reg. 58 of the Staff Regulations and all other provisions relating to the payment of bonus to the employee to the extent they are inconsistent with Rule 3.

6. Writ Petition No. 501 of 1981 under Article 32 of the Constitution was filed in this Court on Feb. 5, 1981' by Shri. A.V. Nachane and the All India Life Insurance Corporation Employees Federation, Bombay, challenging the validity of the Ordinance and the aforesaid rules. Similar writ petitions by other associations of the employees of the Corporation followed. In the meantime the ordinance was repealed and replaced on March 17, 1981 by the Life Insurance Corporation (Amendment) Act, 1981 which received the assent of the President of India on the same day...The writ petitions were suitably amended after the Amendment Act came into force. The provisions of the Act are similar to those of the Ordinance except that the Amendment Act adds a new Sub-section, Sub-section (3), to Section 49 of the principal Act. The new Sub-section (3) which provides that the regulations made under Section 49 shall be laid before each House of Parliament are similar in terms to Sub-section (3) of Section 48 requiring the rules made by

the Central Government under the Act to be laid before each House of Parliament. Section 4 of the Amendment Act repeals the Ordinance but provides that 'notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.'

7. The validity of the Amendment Act and the Life Insurance Corporation of India Class III and Class IV Employees (Bonus and Dearness Allowance) 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-section (2C) of Section 48, was invalid to the extent it permitted retrospective operation to Section 3 to override the order of this Court disposing of D.J. Bahadur's case : (1981)1LLJ1SC . The challenge based on Art, 19(1)(g) and Article 21 does not appear to have any substance. Apart from anything else, a claim based on the 1974 settlements is certainly not a fundamental right that could be enforced through this Court. As regards Article 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 : [1960]3SCR499 .

8. The contention that Art, 14 is infringed arises on the provision of Sub-section (2C) of Section 48 that any rule made under Clause (cc) of Sub-section (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 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 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 submitted 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 employees of the Life Insurance Corporation. We have already said that 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. There is no material before us on the basis of which we can hold that the Amendment Act of 1981 and the rules

made on Feb. 2, 1981 infringe Article 14. We do not think that on the facts of this case *Express Newspapers Ltd. v. Union of India* : (1961)ILLJ339SC , and *Moti Ram Deka v. General Manager, N.E.F. Railways, Maligaon Pandu* : (1964)ILLJ467SC , relied on by the petitioners, have any application.

9. It was contended that Sub-section (2C) added to Section 48 of the Life Insurance Corporation Act, 1956 by the Amendment Act of 1981 was invalid because of excessive delegation of legislative functions and that if Sub-section (2C) which is an integral part of the Amendment Act was ultra vires, the entire Amendment Act would be unconstitutional. The Amendment Act introduced Clause (cc) in Section 48(2) authorising the Central Government to make rules in respect of the terms and conditions of service of the employees and agents of the Corporation. Sub-section (2C) of Section 48 provides inter alia that rules made under Clause (cc) shall have effect notwithstanding anything contained in the Industrial Disputes Act, 1947 or any other law for the time being in force. The argument is that the rules made under Section 48(2)(cc) can virtually repeal the Industrial Disputes Act and other laws to the extent they are inconsistent with these rules. Repealing a law, it was submitted on the authority of *In re Delhi Laws Act* AIR 1951 SC 332, was an essential legislative function which had been delegated to the Central Government and that the delegation was therefore excessive. It is now well settled that it is competent for the legislature to delegate to other authorities the power to frame rules to carry out the purposes of the law made by it (see *In re the Delhi Laws Act*, *Raj Narain Singh v. The Chairman, Patna Administration Committee Patna* : [1955]1SCR290 , and *D.S. Garewal v. State of Punjab* : AIR 1959 SC512) but the essential legislative functions cannot be delegated. What is essential legislative function has been explained by Mukerjee, J., in the *Delhi Laws* case AIR 1951 SC 332 as follows:

The essential legislative function consists in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. It is open to the legislature to formulate the policy as broadly and with as little or as much details as it thinks proper and it may delegate the rest of the legislative work to a subordinate authority who will work out the details within the framework of that policy.' In *Raj Narain Singh v. Chairman, Patna Administration Committee, Patna*,

a Bench of five Judges of this Court held that an-executive- authority can be empowered' by a statute to modify either existing or future laws but not in any essential feature. In the instant case Section 48(2C) read with Section 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 the provisions of the Industrial Disputes Act or any other law will not be operative. The argument is that Sub-section (2C) or any other provision introduced in the principal Act by the Amendment Act does not lay down any legislative policy nor supply any guidelines as to the extent to which the rule-making authority would be competent to override the provisions of the Industrial Disputes Act or other laws. Reference was made to *Municipal Corporation of Delhi v. Birla Cotton Spinning and Weaving Mills, Delhi* : [1968]3SCR251 and *Gwalior Rayon Silk Manufacturing (Weaving) Company, Limited v. Assistant Commissioner of Sales Tax* : [1974]94ITR204(SC) for the proposition that unlimited right of delegation is not inherent in the legislative power itself.

10. The question therefore is, does the Amendment Act of 1981 lay down No. legislative policy or furnish no guidance to indicate the nature and extent of the modifications that the rules will be permitted to make in. the existing laws to carry out the purposes of the Life Insurance Corporation Act, 1956 as amended in 1981? Learned Attorney General relied on the decision of this Court in *Harishankar Bagla v. State of Madh Pra* : 1954 CriLJ1322 . This was a case under the Essential Supplies (Temporary Powers) Act, 1946. Section 3(1) of that Act says that the Central Government for maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices, may by order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Sub-section (2) of Section 3 states that without prejudice to the generality of the powers conferred by Sub-section (1), such an order may provide inter alia for regulating by licences or permits or otherwise the production or manufacture and transport, distribution, disposal, acquisition, use or consumption of any essential commodity, Section 6 of that Act provides inter alia that any order made under Section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other

than that Act, In exercise of the powers conferred by Section 3 of that Act the Central Government made the Cotton Textiles (Control of Movement) Order, 1948. Clause 3 of the said Order requires a person to take a permit from the Textile Commissioner to enable him to transport cotton textiles. One of the questions that arose in Hari-shanker Bagla's case : 1954 CriLJ1322 was whether Section 6 of the Essential Supplies (Temporary Powers) Act permitted rules to be made by the Central Government repealing by implication an existing law, which was an essential legislative function and could not validly be delegated. Mahajan, C.J., speaking for the court said (at p. 469):

Section 6 does not either expressly or by implication repeal any of the provisions of pre-existing laws neither does it abrogate them. Those laws remain untouched and unaffected so far as the statute book is concerned. The repeal of a statute means as if the repealed statute was never on the statute book. It is wiped out from the statute book. The effect of Section 6 certainly is not to repeal any one of those laws or abrogate them. Its object is simply to by-pass them where they are inconsistent with the provisions of the Essential Supplies (Temporary Powers) Act, 1946, or the orders made thereunder. In other words, the orders made under Section 3 would be operative in regard to the essential commodity covered by the Textile Control Order wherever there is repugnancy in this Order with the existing laws and to that extent the existing laws with regard to those commodities will not operate. By-passing a certain law does not necessarily amount to repeal or abrogation of that law. That law remains unrepealed but during the continuance of the Order made under Section 3 it does not operate in that field for the time being.

We think the Attorney General was right in his submission that what has been said of Section 6 of the Essential Supplies (Temporary Powers) Act should hold good for Sub-section (2C) of Section 48 of the Life Insurance Corporation Act which is similar in terms in so far as it authorises the Central Government to make rules by-passing the existing laws. Mahajan, C J., also holds that assuming that the rules framed under the Act had the effect of repealing the existing laws, the power to repeal is exercised not by the delegate but by the Act itself. This is what he says on those points (at p. 469):

Conceding, however, for the sake of argument that to the extent of a repugnancy between an order made under Section 3 and the provisions of an existing law, to the extent of the repugnancy, the existing law stands repealed by implication, it seems to us that the repeal is not by any Act of the delegate, but the repeal is by the legislative Act of the Parliament itself. By enacting Section 6 Parliament itself has declared 'that an order made under. S, 3 shall have effect notwithstanding any inconsistency in this order with any enactment other than this Act. This is not a declaration made by the delegate but the Legislature itself has declared its will that way in Section 6. The abrogation or the implied repeal is by force of the legislative declaration contained in Section 6 and is not by force of the order made by the delegate under Section 3. The power of the delegation is only to make an order under Section 3. Once the delegate has made that order its power is exhausted. Section 6 then steps in wherein the Parliament has declared that as soon as such an order comes into being that will have effect notwithstanding any inconsistency therewith contained in any enactment other than this Act. Parliament being supreme, it certainly could make a law abrogating or repealing by implication provisions of any pre-existing law and no exception could be taken on the ground of excessive delegation to the Act of the Parliament itself.

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-section (2C) of Section 48 enacted by Parliament itself. The observations quoted above from Hari-shanker Bagla's case which was decided by a bench of five Judges appear to support the Attorney General's contention.

11. 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 Mukerjea, 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 Harishanker Bagla's case : 1954 CriLJ1322 one of the

questions for decision was whether Section 3 of the Essential Supplies (Temporary Powers) Act, 1946 amounts to delegation of legislative power outside the permissible limits. It was held that legislature had laid down. a. legislative principle which was 'maintaining or increasing supplies of any essential commodity,' and 'securing 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 Section 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 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 Harishanker Bagla's case offering sufficient guidance to the Central Government in exercising its powers under that Act. We have referred to Section 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 such modified form or be of no effect, as the case may be. This Court in D.S. Garewal v. State of Punjab : AIR 1959 SC512 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 Harishanker Bagla and D.S. Garewal, 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 functions.

12. It was contended on behalf of the petitioners that in any event the provisions of the Amendment Act of 1981 could not nullify the effect of the writ issued by this

Court in D.J. Bahadur's case, : (1981)ILLJ1SC . In our opinion this contention has substance Clause (cc) of Section 48(2) empowers the Central Government to make rules with regard to the terms and conditions of service of the employees and agents of the Corporation. Sub-section (2A) of Section 48 provides that the regulations made under Section 49 of the Act and 'other provisions' as in force before the commencement of the Amendment Act with respect to the said terms and conditions are to be deemed as rules made under Clause (cc) of Section 48(2) Sub-section (2B) of Section 48 says that the power to make rules conferred by Clause (cc) of Sub-section (2) shall include the power to add, vary or repeal the regulations and 'other provisions' referred to in Sub-section (2A) with retrospective effect from a date not earlier than June 20, 1979. Clearly a writ issued by this Court is not a regulation nor can it be described as 'other provision' which expression possibly includes circulars and administrative directions. Sub-section (2C) of Section 48 however provides inter alia that any rules made under Clause (cc) with retrospective effect from any date shall be deemed to have had effect from that date notwithstanding any judgment, decree or order of any court, tribunal or other authority. The order disposing of D. J. Bahadur's case made on Nov-10, 1980 reads:

In view of the opinion expressed by the majority, the appeal is dismissed with costs to the first, second and third respondents, and the Transfer Petition No. 1 of 1979 stands allowed insofar that a writ will issue to the Life Insurance Corporation directing it to give effect to the terms of the settlements of 1974 relating to bonus until superseded by a fresh settlement, an industrial award or relevant legislation. Costs in respect of the Transfer Petition will be paid to the petitioners by the second respondent.

The Life Insurance Corporation of India Class III and Class IV Employees (Bonus and Dearness Allowance) Rules, 1981 were made by the Central Government on Feb. 2, 1981 in exercise of the powers conferred by Section 48 of the Life Insurance Corporation Act, 1956 as amended by the Life Insurance Corporation (Amendment) Ordinance, 1981. Rule 3 of these rules relates to the subject of bonus concerning Class III and Class IV employees of the Corporation. The substance of this rule has been set out earlier in this judgment. Clearly Rule 3

seeks to supersede the terms of the 1974 settlements relating to bonus. By virtue of Rule 1(2), Rule 3 'shall be deemed to have come into force on the 1st day of July, 1979'. The question is, can Rule 3 read with Rule 1(2) nullify the effect of the writ issued by this Court on Nov. 10, 1980 in D.J. Bahadur's (sic) It seems to us Rule 3 cannot make the writ issued by this Court nugatory in view of the decision of the majority in *Madan Mohan Pathak v. Union of India* : (1978)ILLJ406SC , to which reference has been made earlier. In *Madan Mohan. Pathak's* case it was contended that since the Calcutta High Court had by its judgment dated May 21, 1976 issued a writ of mandamus directing the Life Insurance Corporation to pay annual cash bonus to Class III and Class IV employees for the year April, 1, 1975 to March 31, 1976 as provided by the 1974 settlements and this judgment had become final, the Life Insurance Corporation was bound to obey the writ of mandamus and pay as ordered by the High Court. The court was dealing with the Life Insurance Corporation (Modification of Settlement) Act, 1976 in that case. Section 3 of that Act provided that the terms of the settlements in so far as they related to the payment of annual cash bonus to Class III and Class IV employees would not have any force or effect and be deemed not to have had any force or effect; from April, 1975. Bhag-wati, J., speaking also for Iyer and Desai, JJ., observed (at p. 817):

Here, the judgment given by the Calcutta High Court, which is relied upon by the petitioners, is not a mere declaratory judgment holding an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. But it is a judgment giving effect to the right of the petitioners to annual cash bonus under the Settlement by issuing a writ of Mandamus directing the Life Insurance Corporation to pay the amount of such bonus. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation, We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is constitutionally valid or not, the Life Insurance Corporation is bound to obey the writ of Mandamus issued by the Calcutta High Court....

Beg, C. J., who delivered a separate but concurring judgment, after pointing out the 'hurdle in the way' of the petitioner's claim based on Article 19(1)(f) of the Constitution, which was that the Act (Life Insurance Corporation (Modification of Settlement) Act, 1976) was passed during the emergency, observed (at. pp. 809, 810 of AIR):

The object of the Act was, in effect, to take away the force of the judgment of the Calcutta High Court recognising the settlements in favour of Class III and Class IV employees of the Corporation. Rights under that judgment could be said to arise independently of Article 19 of the Constitution. I find myself in complete agreement with my learned brother Bhagwati, J. that to give effect to the judgment of the Calcutta High Court is not the same thing as enforcing a right under Article 19 of the Constitution. It may be that a right under Article 19 of the Constitution becomes linked up with the enforceability of the judgment. Nevertheless, the two could be viewed as separable sets of rights. If the right conferred by the judgment independently is sought to be set aside, Section 3 of the Act, would, in my opinion, be invalid for trenching upon the judicial power.

I may, however, observe that even though the real object of the Act may be to set aside the result of the mandamus issued by the Calcutta High Court, yet, the section does not mention this object at all. Probably this was so because the jurisdiction of a High Court and the effectiveness of its orders derived their force from Article 226 of the Constitution itself. These could not be touched by an ordinary act of Parliament. Even if Section 3 of the Act seeks to take away the basis of the judgment of the Calcutta High Court, without mentioning it, by enacting what may appear to be a law, yet, I think that where the rights of the citizen against the State are concerned, we should adopt an interpretation which upholds those rights. Therefore, according to the interpretation I prefer to adopt the rights which had passed into those embodied in a judgment and become the basis of a Mandamus from the High Court could not be taken away in this indirect fashion.

13. The Attorney General referred to a number of earlier decisions of this Court wanting us to infer that the observations quoted above from the judgment in

Madan Mohan Pathak's case : (1978)ILLJ406SC did not state the correct law in view of the said decisions. But these observations expressed the majority view of a bench of seven Judges bearing directly on the point that arises for decision in the instant case and are binding on us. We (therefore hold that Rule 3 operating retrospectively cannot nullify the effect of the writ issued in D.J. Bahadur's case : (1981)ILLJ1SC which directed the Life Insurance Corporation to give effect to the terms of the 1974 settlements relating to bonus until superseded by a fresh settlement, an industrial award or relevant legislation. The Life Insurance Corporation (Amendment) Act, 1981 and the Life Insurance Corporation of India Class III and Class IV Employees (Bonus and Dearness Allowance) Rules, 1981 are relevant legislations. However in view of the decision in Madan Mohan Pathak's case, these rules, in so far as they seek to abrogate the terms of the 1974 settlements relating to bonus, can operate only prospectively, that is, from Feb. 2, 1981, the date of publication of the rules. The petitions are allowed to this extent only.

14. In the circumstances of the case we make no order as to costs.

O. Chinnappa Reddy, J.

15. I have had the advantage of perusing the opinion of my brother Gupta, J., I agree with his conclusion that the Life Insurance Corporation (Amendment) Act I of 1981 can operate but prospectively in so far as it seeks to nullify, the terms of the 1974 settlements in regard to the payment of bonus. On some of the other questions I have certain reservations. I do not, however, desire to express any opinion on those questions' as my brother Pathak, J., has indicated that he is inclined to agree with Gupta, J., on those questions. Perhaps I will do well to add a few words of my own on the question of retrospectivity, I am spared the necessity of stating the facts as those that are necessary have been stated by my brother Gupta, J.

16. The 1974 settlements provided, among various other matters, for the payment of annual cash bonus (not a profit sharing bonus) to their Class III and Class IV employees at the rate of 15 per cent of the annual salary. The settlements were to

be operative from 1st Apr., 1973 to 31st Mar., 1977. That the settlements were to be operative from 1st Apr., 1973 to 31st Mar., 1977 did not mean that the settlements would cease to be effective peremptorily from 1-4-1977 and, therefore, the annual cash bonus stipulated under the settlements would cease to be payable from that date onwards. The settlements would continue to be binding even after 31-3-1977 and would (sic) to be liable to be terminated by the (sic) of a unilateral notice by the employer purporting to terminate the settlements. The settlements would cease to be effective only when they were replaced by 'a fresh settlement, an industrial award or relevant legislation'. This is the law and this was what the law was pronounced to be in *Life Insurance Corporation of India v. D.J. Bahadur* : (1981)ILLJ1SC on a consideration of the relevant provisions and precedents.

17. The attempt made to supersede the settlements, in so far as they related to the payment of bonus, by enacting the Life Insurance Corporation (Modification of Settlement) Act 1976 failed, firstly because the Act was held to violate the provisions of Article 31(2) of the Constitution and secondly because the Act could not have retrospective effect so as to absolve the Life Insurance Corporation from obeying the writ of mandamus issued by the Calcutta High Court, which had become final and binding on the parties. This was the decision of this Court in *Madan Mohan Pathak v. Union of India* : (1978)ILLJ406SC, all the seven judges who constituted the Bench agreeing that the Act violated the provisions of Article 31(2) and four out of the seven Judges, namely, Beg, C.J., Bhagwati, Krishna Iyer and Desai, JJ., taking the view that the Act did not have the effect of nullifying the writ of mandamus issued by the Calcutta High Court and the other three Judges, Chandrachud, Fazal Ali and Shinghal, JJ., preferring not to express any view on that question.

18. The second attempt to nullify the 1974 settlements in regard to payment of bonus, by issuing notices under Section 19(2) and Section 9-A of the Industrial Disputes Act and by amending the Standardisation Order and the Staff Regulations, was frustrated by the judgment of this Court in *Life Insurance Corporation of India v. D.J. Bahadur* : (1981)ILLJ1SC, the Court taking the view that the two settlements could only be superseded by 'a fresh settlement, an

industrial award or relevant legislation'. In this case, the Court issued a writ to the Life Insurance Corporation 'to give effect to the terms of the settlements of 1974 relating to bonus until superseded by a fresh settlement, an industrial award or relevant legislation.

19. The effect of the two judgments in Madan Mohan Pathak's case : (1978)ILLJ406SC and D.J. Bahadur's case : (1981)ILLJ1SC , was clear : the settlements of 1974, in so far as they related to bonus, could only be superseded by a fresh settlement, an industrial award or relevant-legislation- But any such supersession could only have future effect, but not retrospective effect so as to disentitle the Class III and Class IV employees of the Life Insurance Corporation from receiving the cash bonus which had been earned by them, day by day, and which the Life Insurance Corporation of India was under an obligation to pay in terms of the writ issued in D.J. Bahadur's case. The present attempt made by the 1981 amending Act and the rules thereunder to scuttle the payment of bonus with effect from a date anterior to the date of the enactment must, therefore, fail. The employees are entitled to be paid the bonus earned by them before the date of publication of the Life Insurance Corporation of India, Class III and Class IV Employees (Bonus and Dearness Allowance) Rules, 1981.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com