

P.V. Mani and ors. Vs. Union of India (Uoi) and ors.

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Court : Kerala

Decided On : May-27-1985

Reported in : AIR1986Ker86

Judge : K. Bhaskaran, C.J.,; P.C. Balakrishna Menon and; V. Sivaraman Nair, JJ.

Acts : [Life Insurance Corporation Act, 1956](#) - Sections 11(2), 21, 48(2A), 48(2C) and 49(2); Life Insurance Corporation Development Officers (Alteration of Remuneration and other Terms and Conditions) Order, 1978; [Constitution of India](#) - Articles 13, 14 and 245; Life Insurance Corporation of India (Staff) (Sixth Amendment) Regulations, 1978 - Regulation 1; Industrial Disputes Act - Sections 9A

Appeal No. : O.P. No. 3061 of 1979-M

Appellant : P.V. Mani and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : S. Easwara Iyer, Adv.

Advocate for Pet/Ap. : S. Narayanan Poti, Adv.

Disposition : Petition dismissed

Judgement :

Sivaraman Nair, J.

1. Seventeen Development Officers of the Life Insurance Corporation of India are the petitioners in this Original Petition. They seek to avoid Ext. P2 order of the Government of India and Ext. P3 Regulation issued by the Life Insurance Corporation of India, both on the same day viz., 19-12-1978. During the pendency of the Original Petition, the [Life Insurance Corporation Act, 1956](#), was amended by Life Insurance Corporation (Amendment) Act, 1 of 1981, incorporating Exts. P2 and P3 as rules under Section 48(2)(cc) of the Act, Petitioners therefore challenge the validity of Act 1 of 1981 also.

2. The Life Insurance Corporation (hereinafter referred to as the Corporation) was constituted under the [Life Insurance Corporation Act, 1956](#) (hereinafter referred to as the Act). The Life Insurance business of about 243 companies was nationalised with effect from 1-9-1956 under the above enactment, which replaced its predecessor Ordinance. Chapter IV of the Act consists of Sections 7 - 17, which provide for transfer of existing life insurance business to the Corporation. Section 11 of the Act deals with transfer of service of existing employees of insurers to the Corporation. It is necessary to extract this provision in full since the substantial controversy centres round the provisions of this section : --

'11. (1) Every whole-time employee of an insurer whose controlled business has been transferred to and vested in the Corporation and who was employed by the insurer wholly or mainly in connection with his controlled business immediately before the appointed day shall, on and from the appointed day, become an employee of the Corporation, and shall hold his office therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity and other matters as he would have held the same on the appointed day if this Act had not been passed, and shall continue to do so unless and until his employment in the Corporation is terminated or until his remuneration, terms and conditions are duly altered by the Corporation :

Provided that nothing contained in this subsection shall apply to any such employee who has, by notice in writing given to the Central Government prior to

the appointed day, intimated his intention of not becoming an employee of the Corporation.

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

Explanation.-- The compensation payable to an employee under this sub-section shall be in addition to, and shall not affect, any pension, gratuity, provident fund money or any other benefit to which the employee may be entitled under his contract of service.

(3) If any question arises as to whether any person was a whole-time employee of an insurer or as to whether any employee was employed wholly or mainly in connection with the controlled business of an insurer immediately before the appointed day the question shall be referred to the Central Government whose decision shall be final.

(4) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any employee of an insurer to the Corporation shall not entitle any such employee to any compensation under that Act or other law, and no such claim shall be

entertained by any court, tribunal or other authority.'

Section 23 of the Act deals with staff of the Corporation, and enables the Corporation to employ such number of persons as it thinks fit. Section 48 of the Act deals with the power to make rules. Clause (j) of Sub-section (2) thereof enables the Central Government to frame rules relating to conditions, subject to which the Corporation may appoint employees. This provision does not obviously refer to transferred employee. Section 49 of the Act vests power to make regulations in the Corporation with the previous approval of the Central Government by notification in the Gazette of India. Clauses (b) and (bb) of Sub-section (2) thereof deal with 'the method of recruitment of employees and agents of the Corporation and the terms and conditions of service of such employees or agents', and 'the terms and conditions of service of persons who have become employees of the Corporation under Sub-section (1) of Section 11'. Section 43 of the Act provides that specific provisions of the Insurance Act which shall apply to the Corporation as they applied to any other insurer.

3. With the formation of the Corporation to take over the entire Life Insurance business in the country, the services of staff employed by the erstwhile life insurance companies were transferred to the Corporation under Section 11 of the Act in accordance with the same service conditions relating to rights and privileges as to pension, gratuity and other matters unless and until such employment in the Corporation was terminated or until the remuneration, terms and conditions of service were duly altered by the Corporation. These provisions were not to apply to persons, who had opted out of such transfer in writing. The transferred employees, who were to continue in the service of the Corporation on the pre-existing service conditions were, however, subject to the power of the Central Government under Sub-section (2) of Section 11 of the Act, on its satisfaction that in public interest and in the interests of its policy holders so to do, to standardise service conditions of such transferred employees whether by way of reduction or otherwise of the remuneration and to alter other terms and conditions of service to such extent and in such manner as it thought fit. Such alteration of service conditions could be made for the aforesaid purposes notwithstanding anything contained in Sub-section (1), or in the Industrial Disputes Act, 1947, or in any other

law, award, or settlement in force. If the alterations were not acceptable to any employee, his service was terminable on payment of compensation equivalent to three months' remuneration, or compensation for such shorter notice of termination, as provided in the contract of service.

4. In exercise of the powers under Section 11(2), the Government of India issued the Field Officers (Alteration of Remuneration and other Terms and Conditions of Service) Order, 1957 (hereinafter referred to as the Blue Order). It approved time-scale of pay and dearness and conveyance allowances for Field Officers, to which category, the petitioners belong. Increments in the scale of salary was linked to performance appraisal, to be made on a number of factors. The Blue Order also provided for disciplinary proceedings whenever an employee was found to be guilty of negligence, misconduct etc. The Life Insurance Corporation of India (Staff) Regulations, 1956, issued under Section 49(2)(b) and (bb), providing for conditions, of service of employees, including the Field Officers/Development Officers, were substituted by the 1960 Regulations framed under the same provisions. The service conditions were sought to be modified by agreements entered into between Representative Organisations of the employees and the Corporation in 1964, 1965 and 1971. According to the latest of these agreements, Development Officers were to canvass business consisting on 100 lives and involving scheduled First Year Premium of not less than Rs. 25,000 with effect from 1-4-1971, and 125 lives and Rupees 30,000 as scheduled First Year Premium with effect from 1-4-1974 as the minimum for each Development Officer. A joint divisional committee was to consider representations of any employee falling behind the norms of performance and who was subject to penal consequences. The unanimous recommendations were to be given effect to by the Divisional Manager. In case of differences in the committee, the Divisional Manager was to devise the action in his discretion.

5. A committee appointed by the Government of India to examine measures to streamline the economic working of the Corporation -- Morarka Committee -- found that the annual increments unrelated to volume of business generated by the organisation of the Development Officer was counter productive and suggested immediate steps to reorganise the wage structure. The Central Government,

therefore, issued an order on 8th April, 1976, under Section 11(2) of the Act the LIC Development Officers (Alteration of Conditions of Service) Order, 1976 (hereinafter referred to as the 1976 Order). On 22-4-1976, the Corporation amended the Staff Regulations in relation to Development Officers to fall in line with the order of the Central Government under Section 11(2). That Order and the Regulations were challenged by the Development Officers in many of the High Courts. O.P. No. 5443 of 1976 was filed in this Court. Those petitions challenging the 1976 Order and Regulations were rejected in the decision reported in *Harivadan v. LIC of India* 1977 Lab IC 1072 (Guj), *Ramaswamy v. Union of India* (1977) 1 Lab LJ 211; 1978 Lab IC NOC 46 (Mad) and *Himangshu Kumar v. LIC of India* 1979 Lab IC 1417 (Cal). A similar Order under Section 11(2) and Regulations under Section 49(2) of the Act relating to payment of bonus to Class III and Class IV employees of the Corporation came, up for consideration before the Supreme Court in the decision in *L.I.C. v. D. J. Bahadur* : (1981)ILLJ1SC , and the Court made same observations about the scope of Section 11(2) and Section 49(2) of the Act. The Government of India issued Ext. P2 dated 19-12-1978 the Life Insurance Corporation Development Officers (Alteration of Remuneration and other Terms and Conditions) Order, 1978, Ext. P3 was issued by the Corporation on the same day amending the Staff Regulations, and withdrawing the amended Regulations issued on 22-4-1976. O.P. No. 5443 of 1976 was dismissed as withdrawn in view of Exts. P2 and P3 orders, on 20-7-1979. Petitioners filed O.P. No. 3061 of 1979 challenging Exts. P2 and P3 on 27-8-1979.

6. The 1978 Order and Regulations (Exts. P2 and P3) were challenged in some of the High Courts in the country. Lodha J., of the Rajasthan High Court upheld the challenge against them in the decision reported in *Chauhan v. Life Insurance Corporation of India*, 1982 Lab IC 1864. He held that Development Officers were workmen under the I.D. Act and the alterations in conditions of service were illegal. But that decision was upset in appeal by a Division Bench in the decision reported in *L.I.C. of India v. Chauhan* 1983 Lab IC 1767 (Raj). A Division Bench of the, High Court of Delhi in the decision reported in *Man Singh v. Union of India* 1983 Lab IC 1471 and the Andhra Pradesh High Court in the decision reported in *M. L. Dandavate v. Union of India* 1983 Lab IC 516, also repelled the challenge against Exts. P2 and P3. It was held in all these decisions that Development Officers were

not workmen as defined in the I.D. Act. Patna High Court in the decision of a Division Bench in Writ Jurisdiction Civil Case No. 2905 of 1979 : (reported in 1983 Lab IC NOC 74) also upheld the validity of Exts. P2 and P3. The High Court of Madras also followed suit, in the judgment of a Division Bench consisting of Ramaswamy and Swamikannu JJ. It was in the meantime, that the Life Insurance Corporation of India (Amendment) Act, 1 of 1981, was promulgated apparently to get over the effect of the judgment of the Supreme Court reported in L.I.C. v. D. J. Bahadur : (1981)ILLJ1SC . The object of that enactment was to delete Clause (bb) of Section 49 of the Act, enabling the Corporation to frame regulations relating to service conditions of the transferred employees, and to confer that power as part of the rule making power of the Central Government by enacting Section 49(2)(cc) of the Act. Regulations issued under Section 49(2)(bb) and other provisions were deemed to be rules issued under Section 48(2)(cc), and such deemed rules were given effect to from 20-7-1979. The consequence of this enactment, detailed provisions of which are extracted hereunder, is one of the matters for consideration in this Original Petition :

'2. Amendment of Section 48.-- In the Life Insurance Corporation Act 1956 (31 of 1956) (hereinafter referred to as the principal Act), in Section 48 -

(a) in Sub-section (2), after Clause (c), the following clause shall be inserted and, shall be deemed to have been inserted with effect from the 20th day of June, 1979, namely : --

(cc) 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,";

(b) after Sub-section (2), the following subsections shall be inserted, namely : --

'(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-section (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-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, from a date not earlier than the twentieth day on June, 1979.

(2C) 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 (14 of 1947) or any other law or any agreement, settlement, award or other instrument for the time being in force'.

3. Amendment of Section 49.- In Section 49 of the Principal Act.-

(a) in Sub-section (2),--

(i) in Clause (b), the words 'and the terms and conditions of service of employees or agents' shall be omitted.

(ii) Clause (bb) shall be omitted; and

(b) after Sub-section (2), the following subsection shall be inserted, namely : --

'(3) 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 or the successive sessions aforesaid or 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.'

7. A Division Bench of this Court heard this original petition and decided to refer the matter to a Full Bench in view of the bewildering array of decisions of Division Benches of other High Courts with which the Division Bench could not agree. That is how the matter comes before us now.

8. Shri Narayanan Poti, counsel for the petitioners submits that the only power of the Government of India under Section 11(2) of the Act is to issue orders in the process of transfer and integration of services of employees of erstwhile insurers and not for purposes of providing, or altering the service conditions of the integrated services. He submits that Ext. P2, in so far as it travels beyond the authority conferred by Section 11(2) is void. It is his further submission that in framing Ext. P3 on the same day as Ext. P2 and pursuant to the command contained therein, the Corporation was not exercising its regulation-making powers bona fide, and its mechanical acceptance of the dictates of the Central Government vitiated Ext. P3. It is his submission that the effect of Exts. P2 and P3 is to alter the service conditions obtaining immediately prior to the issue thereof to the detriment of Development Officers like the petitioners; and that such alteration in service conditions to their prejudice could have effect only in compliance with Section 9A of the I.D. Act. He proceeds further to submit, that any alteration in service conditions specified in the Fourth Schedule to the Industrial Disputes Act, which would prejudice the workmen without compliance with Section 9A of the I.D. Act, is void from its inception and cannot be validated by any subsequent statutory enactment. It is also submitted that if the exercise of the power under Section 49(2)(bb) of the Act by the Corporation in framing Ext. P3 Regulations in unquestioned obedience to the dictates of the Central Government as contained in Ext. P2 was invalid ab initio, life cannot be breathed into that instrument by any subsequent statutory enactment. It is submitted that Exts. P2 and P3 are per se discriminatory and violative of Articles 14 and 16 of the [Constitution of India](#), and as such, they cannot be brought back to life by a validating enactment like. Act 1

of 1981. Counsel submits that the other High Courts in deciding on the validity of Exts. P2 and P3 had held that Development Officers were not 'workmen' as defined in Section (2) of the I.D. Act, and that position has now been completely altered by the decision of the Supreme Court reported in S. K. Verma v. Mahesh Chandra : (1983)ILLJ429SC . The increase in volume of business of the Corporation which was attributable at least in part to the Development Officers is referred to in detail in an attempt to make out that there was no merit in the Corporation's case that the continuance of the Development Officers in employment was uneconomical. Reference is also made to recent notifications inviting applications afresh for appointment as Development Officers. It is submitted that due to no fault of his, a Development Officer is likely to suffer reduction in emoluments to a considerable extent, reversion as Class III employee or even termination of service without affording him a reasonable chance of pleading before a representative appraisal machinery, that there was no fall in performance below the norms or that deficiency in performance, if any was due to circumstances beyond his control. Petitioners submit that under the Blue Order as supplemented by the agreements, they could either have pleaded these factors before a representative appraisal committee, or could have been proceeded against only in a formal disciplinary proceedings with an antecedent opportunity to show cause. Denial of such an opportunity amounts to variation of service conditions to the prejudice of the petitioners. The fixation of limit of expenses with reference to remuneration of Development Officers with minor variables and with reference only to operational areas determined on population and arbitrarily fixed eligible first year premium is said to be per se discriminatory since the local conditions which may accelerate or decelerate generation of business in areas having same population the nature and potential of the agency organisation and such other imponderables are not taken into account. Stoppage/reduction in increments, with cumulative effect leading to reversion to a lower category or termination of service altogether, on the basis of one sided assessment of performance related to an arbitrary norm of performance with reference to an unrealistic cost-performance ratio is also said to amount to arbitrary and unreasonable alteration in conditions of service. It is submitted that Section 2A of Act 1 of 1981 validates only regulations and other provisions legally in force on the

date of its promulgation and cannot save Exts. P2 and P3, if they are found to be ab initio void. The further case of the petitioners is that the retrospective validation cannot date back to the date of promulgation of Exts. P2 and P3 since they are violative of Articles 19(1)(f) and 31 of the [Constitution of India](#).

9. Mr. Easwara Iyer, counsel for the respondents, submits that Section 11(2) of the Act is, in two limbs, as noticed by Pathak J., in the decision reported in L.I.C. of India v. D. J. Bahadur : (1981)ILLJ1SC . According to him, the former limb deals with transfer and integration of employees, and standardisation of the terms and conditions of service as a consequence thereof. The latter limb enables the Corporation to reduce, in public interest and in the interests of the policy holders, the remuneration of its employees or to revise other terms and conditions of service applicable to all employees of the Corporation, notwithstanding anything contained in Sub-section (1), or the Industrial Disputes Act, 1947, or in any other law for the time being in force. According to him, this latter limb is independent of the former as found by Rajasthan, Patna, Andhra Pradesh, Delhi, Madras and Calcutta High Courts in the decisions referred to earlier. It is the submission of counsel that the Blue Order was issued in exercise of the powers of the Corporation under the first limb of Section 11(2), whereas Ext. P2 was issued in exercise of the powers under the second limb. According to him, an order issued under Section 11(2) as also the Regulations issued under Section 49(2)(bb) of the Act are subordinate legislative instruments, in the making of which, the only enquiry which the court can undertake is to ascertain whether such exercises were within the precincts of the power conferred by the statute and the competence of the authorities concerned. If once it is found that the authority exercising the power to issue subordinate legislative instruments has the power to do so, the motive behind the exercise of the power and such other considerations as in form the issue of the instruments, are not matters for investigation by courts. It is his case that 1976 order issued in exercise of the same powers having been upheld by all the High Courts, and even the challenge against Exts. P2 and P3 having been repelled by Rajasthan, Patna, Andhra Pradesh, Delhi and Madras High Courts on the basis of the decision of the Supreme Court reported in L.I.C. of India v. D. J. Bahadur : (1981)ILLJ1SC the petitioners cannot successfully sustain the attack against Exts. P2 and P3. It is further submitted that the office of Exts. P2 and P3 is

to correlate the remuneration to productivity, and such attempt at introduction of wages linked to productivity cannot be termed as unreasonable, arbitrary or discriminatory. Existence of any binding industrial settlement, agreement or award in relation to wages or any matter covered by Section 9A of the I.D. Act is emphatically denied by the Corporation. It is therefore said that the dictum laid down by the Supreme Court in the decision reported in *L.I.C. of India v. D. J. Bahadur* : (1981)ILLJ1SC does not apply to the petitioners. He also submits that Section 9A of the I.D. Act can apply only if it is proved that service conditions in respect of any of the items of IVth Schedule of the I.D. Act were altered to the prejudice of the workmen concerned. Counsel submits that violation of Section 9A of the I.D. Act was not even mentioned in the original petition. Even in the reply affidavit filed three years thereafter, no particulars were given so as to enable the Corporation to advance its specific case in respect of the same. He submits that the production linked wages visualised in Exts. P2 and P3 were introduced only after a comprehensive study of the wages and development activities of Class II Officers in depth. It is his case that Exts. P2 and P3 are not discriminatory or arbitrary. It is also submitted that whatever defects there were in Exts. P2 and P3, the enactment of Act 1 of 1981 is capable of curing all such defects by treating Ext. P3 and other provisions, including Ext. P2, as rules framed with retrospective effect from 19-12-1978 under Section 48(2)(cc) of the Act.

10. The points which therefore call for consideration are the following : --

(i) What is the effect of Section 11(2) of the Act? Does it authorise the Central Government to alter conditions of service of employees otherwise than in aid of transfer of employees, integration of its services and standardisation of service conditions of transferred employees?

(ii) Does Ext. P2 travel beyond the power of the Central Government under Section 11(2) of the Act and is it for that reason invalid?

(iii) Is Ext. P3 invalid for the reason that it was issued under compulsion of the dictate contained in para 4 of Ext. P2? In other words, does the direction in Ext. P2 to frame Regulations render Ext. P3 invalid, since the only power the Central Government has under Section 49 of the Act is the power of prior approval and not

antecedent direction?

(iv) Do Exts. P2 and P3 constitute change in the conditions of service of the petitioners to their prejudice, for effecting which, notice under Section 9A of the I.D. Act is obligatory? Does the non-compliance with Section 9A of the I.D. Act render them invalid ab initio?

(v) Are Exts. P2 and P3 arbitrary and discriminatory and therefore violative of Articles 14 and 16 of the [Constitution of India](#)?

(vi) What is the effect of Act 1 of 1981 on the validity of Exts. P2 and P3? We will deal with these points one after the other.

11. The scope and effect of Section 11(2) of the L.I.C. Act: This will take in points (i) and (ii). The earliest decision of the Supreme Court having a bearing on this question is L.I.C. v. Sunil Kumar Mukerjee : (1964)ILLJ442SC , Gajendragadkar, J. (as he then was) speaking for a three member bench held that after the transfer of the employees of the erstwhile insurers to the services of the Corporation, an overriding power was conferred on the Central Government to alter the terms and conditions of service of the transferred employees under Section 11(2) of the Act. It was observed (at p. 851):-

'..... It was thought that for a proper functioning of the Corporation it was essential to confer upon the Central Government an overriding power to change the terms and conditions of employees who were wholly or mainly employed by the insurers prior to the appointed day..... Thus, the scheme of the two sub-sections of Section 11 is clear. The employees of the insurers whose controlled business has been taken over, become the employees of the Corporation, then their terms and conditions of service continue until they are altered by the Central Government, and if the alteration made by the Central Government is not acceptable to them, they are entitled to leave the employment of the Corporation on payment of compensation as provided by Section 11(2).'

This earliest exposition of the scope of Section 11(2) of the Act continues it as applicable only to transferred employees and only to the process of integration and

standardisation of terms and conditions of their services. The effect of those observations was not considered at all in the decisions reported in K. S. Ramaswamy v. Union of India (1977) 1 LLJ 211 : (1978 LIC NOC 46) (Mad) and All India Insurance Employees Association v. Union of India (1977) 1 LLJ 415 : (1977 LIC NOC 41) (Cal). Though that decision was noted by the Gujarat and Calcutta High Courts in Harivadan v. L.I.C. of India 1977 LIC 1072 and Himangshu Kumar v. L.I.C. of India 1979 LIC 1417, the scope of Section 11(2) was not seriously considered in those decisions with reference to the observations extracted above. Nor were these observations considered in M. L. Dandavate v. Union of India 1983 LIC 516 (Andh Pra) or Mansingh v. Union of India, 1983 Lab IC 1471 (Delhi) or L.I.C. of India v. Chauhan 1983 Lab IC 1767 (Raj).

12. Next time the scope of Section 11(2) of the Act was in perspective before the Supreme Court was in the case of L.I.C. of India v. D. J. Bahadur : (1981)ILLJ1SC . We will refer to the opinions of Krishna Iyer and Pathak JJ. who constituted the majority in that decision. It was observed by Krishna Iyer, J. (Para 9) : --

'The statutory transfer of service from the former employers and standardisation of scales of remuneration and other conditions of employment had to be and were taken care of by Section 11 of the [Life Insurance Corporation Act, 1956](#) (for short, the LIC Act). The obvious purpose of this provision was to enable the Corporation initially to absorb the motley multitudes from many companies who carried with them varying incidents of service so as to fit them into a fair pattern, regardless of their antecedent contracts of employment or industrial settlements or awards. It was elementary that the Corporation could not perpetuate incongruous features of service of parent insurers, and statutory power had to be vested to vary, modify or supersede these contracts, geared to fair, equitable and, as far as possible, uniform treatment of the transferred staff. Unless there be unmistakable expression of such intention, the I.D. Act will continue to apply to the Corporation employees. The office of Section 11 of the LIC Act was to provide for a smooth take-over and to promote some common conditions of service in a situation where a jungle of divergent contracts of employment and industrial awards or settlements confronted the State. Unless such rationalisation and standardisation were evolved the ensuing chaos would itself have spelt confusion, conflicts and

difficulties. This functional focus of Section 11 of the LIC Act will dispel scope for interpretative exercises unrelated to the natural setting in which the problem occurs. The inference is clear that Section 11 does not repel the I.D. Act as that is not its purpose.'

Pathak J. observed as follows (Para 66) : --

'The second limb of Sub-section (2) is the source of controversy before us. It empowers the Central Government to reduce the remuneration payable or revise the other terms and conditions of service. That power is to be exercised when the Central Government is satisfied that the interests of the Corporation and its policy-holders require such reduction or revision. The question is whether the provision is confined to transferred employees only or extends to all employees generally. In my opinion, it is confined to transferred employees. The provision is a part of the scheme enacted in Chapter IV providing for the transfer of existing life insurance business from the insurers to the Corporation, and the attendant concomitants of that process.'

'They are all provisions relating to the process of transfer. Sub-section (2) of Section 11 is a part of that process, involving as it does the integration of the Corporation's staff and labour force. While the first limb of the subsection provides for securing uniformity among the transferred employees in regard to their scales of remuneration and other terms and conditions of service, the second limb provides that if after such uniformity has been secured, or even in the process of securing such uniformity, the Central Government finds that the interests of the Corporation and its policy holders require a reduction in the remuneration payable or revision of the other terms and conditions of service applicable to those employees, it may make an order accordingly. It is true that the words 'employees or any class of them' in the second limb are not prefaced by the qualifying word 'transferred' or 'such'. But that was hardly necessary when regard is had to the mosaic of sections in which the provision is located. Admittedly, the first limb of Sub-section (2) relates to transferred employees only, and it must be held that so does the second limb. Both provisions are intended to constitute a composite process for rationalising the scales of remuneration and other terms and

conditions of service of transferred employees with a view not only to effecting a standardisation between the transferred employees but also to revising their scales of remuneration, and terms and conditions of service to a pattern which will enable the newly established Corporation to become a viable and commercially successful enterprise. The standpoint of the second limb of the sub-section as its language plainly indicates, is provided by the interests of the Corporation and its policy-holders. For that reason, it is open to the Central Government under the sub-section to ignore the guarantee contained in Sub-section (1) of Section 11 in favour of the employees, or anything contained in the Industrial Disputes Act, 1947, or any other law for the time being in force or any award, settlement or agreement for the time being in force. Benefits conferred thereunder on the employees must yield to the need for ensuring that the Corporation and its policy holders do not suffer unreasonably from the burden of such benefits. The need for such a provision arises because it is a burden by which the Corporation finds itself saddled upon the transfer, a burden not of its own making unless the statute provided for such relief, the weight of that burden could conceivably cripple the successful working of the Corporation from its inception as a business organisation.' and (Para 68):-

'I am unable to subscribe to the view that the second limb to Sub-section (2) of Section 11 is related to employees generally, that is to say, both transferred and newly recruited employees, of the Corporation'.

It was further held (Para 82) : -

'The only provision, so far as I can see, where the Corporation Act permits disregard of the Industrial Disputes Act and awards, settlements or agreements is the second limb of Section 11(2). And the scope of that provision, as I have explained, is confined to the peculiar circumstance in which the Corporation immediately on coming into existence, finds itself saddled with a recurring financial burden, by virtue of the service of the transferred employees, too heavy for its own viability as a business organisation'.

On the basis of these findings, it was held that the order under Section 11(2), 'purporting to amend the Standardisation Order by substituting Clause (9) is invalid

and the newly enacted Regulation 58 does not affect the contract in respect of bonus embodied in the settlements of 1974.' It is evident, therefore, that both the Judges constituting the majority, had held that Section 11(2) applied only to the process of transfer and integration of employees and standardisation of terms of their services and not to reduction of emoluments or alteration in service conditions of other employees of the Corporation or for purposes other than the processes mentioned above. It is true that each learned Judge emphasised different aspects. But consensus on the points dealt with by each other was definitely indicated in specific terms as is evident from the portions extracted above. We have, therefore, to hold that in spite of the findings to the contrary contained in the judgments of Madras, Patna, Andhra Pradesh, Rajasthan and Delhi High Courts, Section 11(2) is confined only to transferred employees and is related only to reduction of remuneration and alteration in the conditions of service of transferred employees for the purpose of effectuating the transfer and integration of employees and standardisation of the conditions of their services.

13. A similar provision of the General Insurance Business (Nationalisation) Act, 57 of 1972, was considered by the Supreme Court in the decision reported in *Ajay Kumar Banerjee v. Union of India* AIR 1984 SC 1130 : 1984 Lab IC 691. Section 16(1)(g) of Act 57 of 1972 enabled the Central Government to frame schemes for the 'rationalisation or revision of pay scales and other terms and conditions of service of officers and other employees wherever necessary'. Sub-section (2) however provided that the object of the Central Government in framing the schemes should be 'to ensure that ultimately there are only four companies (excluding the Corporation) in existence'. Schemes were framed in 1973 amalgamating and Merging all the general insurance companies into four companies. The schemes became effective from 1-1-1974 on completion of the amalgamation and merger. A scheme of rationalisation and revision of pay scales of officers and employees in aid of the process of merger was framed in May, 1974. After some modifications in that scheme, a fresh scheme was framed and notified on 30th September, 1980 in purported exercise of the power of the Central Government under Section 16(1)(g) of the General Insurance Business (Nationalisation) Act. That scheme was challenged as beyond the competence of the Central Government, since the merger of the insurance companies into four

companies in aid of which alone schemes could be framed, had already become effective long prior to the date of issue of the fresh scheme. Sabyasachi Mukharji J. speaking for the Court, held (Para 26) : --

'Any scheme though it might come within the wide expressions used in Sub-section (6) of Section 16 as well as Clause (g) or Clause (j) of Sub-section (1) of Section 16, which is unrelated to or unconnected with amalgamation of the insurance companies or merger consequent upon nationalisation would be beyond the authority of the Central Government. This has to be so if read in conjunction with Sub-section (2) of Section 16 of the Act.'

and (Para 30) :-

'In view of what we have stated hereinbefore, the scheme of 1980 so far as it is not related to the amalgamation or merger of insurance companies, it is not warranted by Sub-section (1) of Section 16. If that be so, the scheme must be held to be bad and beyond authority.'

It is evident from the above observations that the power incidental to the amalgamation and merger of general insurance companies could not be exercised long after the process was complete. The same principle should apply to the present case as well in understanding the scope of Section 11(2) of the Act.

14. The avowed object of Ext. P2 order was to revise the terms and conditions of service of 'transferred employees holding appointment as development officers' and 'others holding appointment as Development Officers on the date of the order'. Reading Ext. P2 as a whole, there is no room to doubt the purpose of promulgation of that order; it was to effect economy in the working of the development branch of the business of the Corporation as a whole. It is equally clear that it had nothing to do with the process of transfer and integration of services or standardisation or rationalisation of service conditions of the transferred employees soon after and as a part of the process of transfer. We are not emphasising so much the periodicity of the exercise of power under Section 11(2) of the Act but do rely on the emphasis rightly laid by the Supreme Court in Bahadur's case 1980 Lab IC 1218, on the immediacy of its exercise after (he

process of transfer and for effectuating it. We have no doubt that if the necessary causal connection is established and the order is issued as a part of the process of transfer and integration of services, the provisions of Section 11(1) of the Act and the Industrial Disputes Act would be excluded. If the causal connection is not discernible, Ext. P2 order may have to suffer invalidation as overstepping the limits of authority under Section 11(2) of the Act. It should necessarily follow that Ext. P2 in so far as it overstepped the purpose of carrying into effect the transfer and integration of services and standardisation and rationalisation of service conditions including reduction of remuneration of the transferred employees has travelled beyond the competence of the enabling statute, just as much as a similar order issued under Section 11(2) of the Act reducing the non-profit sharing bonus (which was treated as addition to the wages) was held in D. J. Bahadur's case : (1981)ILLJ1SC to have gone beyond the competence of the Central Government.

Validity of Ext. P3 Regulation.

15. We have now to consider the question of the validity of Ext. P3. Did the Corporation act without good faith and compelled by dictates contained in Ext. P2 when it issued Ext. P3 amendment to the Regulations on the same day as Ext. P. 2? To answer this question we must correctly evaluate the power of the Corporation under Section 49 of the Act. If the power is legislative, the motive in framing Ext. P3 may be irrelevant and the scope of inquiry would be rather limited.

16. Gajendragadkar J., as he then was, had occasion to deal with the nature of the powers under Sections 11(2), 48 and 49 of the Act, in the decision reported in Sunil KumarMukherjee's case. : (1964)ILLJ442SC and held (Para 16) :-

'The provisions of the Order, in law, partake only the character of rules framed under Section 48 of the Act. Thus, next to the provisions of Section 11(2) of the Act will stand the provisions of the Order. Then, we have the regulations issued by the Corporation under Section 49(1) of the Act.' But, Beg, C. J., in his concurring judgment in Madan Mohan Pathak v. L.I.C. : (1978)ILLJ406SC , took a slightly different view of the power under Section 11(2) of the Act, when he observed (Para 4):--

'A decision reached by the Central Government under Section 11(2) of the Act is the result of a satisfaction on matters stated there and would imply quasi-judicial procedure where the terms of a settlement had to be renewed or revised. But the legislative procedure does not require that to be done.'

There can, however, be no doubt that the power under Section 49 of the Act is essentially legislative in character.

17. Mr. Poti contends that even if the power under Section 49(2) is legislative in character, the reasonableness, fairness bona fides etc., in the exercise of that power are liable to be examined by this Court in these proceedings. He refers to the decision in *Kruse v. Johnson* (1898) 2 QB 91, in support of this proposition. Reference is also made to 'Administrative Law' by Prof. HWR Wade, wherein it was observed that the fairness, reasonableness, competence etc., of Rules and Bye-laws are open to consideration by Courts. What seems, however, to be lost sight of is that most of the English decisions, particularly the leading case, *Kruse v. Johnson* (1898) 2 QB 91, dealt with municipal bye-laws or corporate bye-laws and not subordinate legislation by the Executive Government. Even in relation to such subordinate legislative instruments, Prof. Wade was cautious to observe that the only examination by Courts must be confined to testing the reasonableness of the instrument by its contents. It was observed : --

'Just as with other kinds of administrative action, the courts must sometimes condemn rules or regulations for unreasonableness. In interpreting statutes it is natural to make the assumption that Parliament could not have intended powers of delegated legislation to be exercised unreasonably, so that the legality of the regulations becomes dependent upon their content.'

18. In *Kruse v. Johnson* (1898) 2 QB 91, Lord Russell of Killowen C. J., upheld the validity of a Municipal Bye-law against singing within 50 yards of dwelling houses for the following reason : --

'But, when the Court is called upon to consider the bye-laws of public representative bodies clothed with the ample authority which I have described, and exercising that authority accompanied by the checks and safeguards which have

been mentioned, I think the consideration of such bye-laws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, 'benevolently' interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered. This involves the introduction of no new canons of construction. But, further, looking to the character of the body legislating under the delegated authority of Parliament, to the subject-matter of such legislation, and to the nature and extent of the authority given to deal with matters which concern them, and in the manner which to them shall seem meet, I think courts of justice ought to be slow to condemn as invalid any bye-law, so made under such conditions, on the ground of supposed unreasonableness.'

Lord Russel C. J., had indicated the extent to which courts may go even in a case of municipal bye-laws in assessing its reasonableness in the following words:

'But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, 'Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires'. But it is in this sense, and in this sense only, as I conceive, that the question of reasonableness can properly be regarded. A bye-law is not unreasonable merely because particular Judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there. Surely it is not, too much to say that in matters which directly and mainly concern the people of the country, who have the right to choose those whom they think best fitted to represent them in their local government bodies, such representatives may be trusted to understand their own requirements better than judges. Indeed, if the question of the validity of bye-laws were to be determined by the opinion of Judges as to what was reasonable in the narrow sense of that word, the cases in the books on this subject are no guide; for they reveal, as indeed one would expect, a wide diversity of judicial opinion, and they lay down no principle of definite

standard by which reasonableness or unreasonableness may be tested.'

It is therefore needless to add that the courts shall approach subordinate legislative instruments with considerable amount of caution and examine them for absence of competence or reasonableness or fairness and other invalidating circumstances with almost the same standards as legislative enactments are dealt with by courts. The presumption of constitutionality, competence and reasonableness ordinarily attaches to such instruments just as much as to legislative enactments, as is evident from the following observations from 'Administrative Agencies and the Courts' by Cooper : --

'Where the legislature has clearly delegated such authority, the only issue that can normally be raised as to the validity of the rule concern the question whether it is ultra vires as exceeding the scope of the authority delegated, and whether it is violative of due process guarantees. These issues are not often presented and accordingly such regulations are normally treated on the same basis as legislative acts'.

It is not that such instruments are absolutely immune from attack. But such attacks should be considered only on production of prima facie proof as to such invalidating circumstances. The court shall not assume that a subordinate legislative instrument is invalid for absence of competence or bona fides or fairness or reasonableness and cast the negative burden on the rule-making authority. It should be just the other way; the person who challenges the vires of a rule has to prove his challenge just as much as a person who challenges a legislative enactment. If he fails in such attempt the challenge can only be thrown out. These observations of ours have the support of weighty authority. Reference may be made to State of U.P. v. Babu Ram : 1961 CriLJ773 :-

'Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act, and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purposes or construction or obligation. The statutory rules cannot be described or equated with administrative directions.'

and J. K. Cotton Spg. & Wvg. Mills Ltd. v. State of U.P. AIR 1961 SC 170, to the effect, that (at p. 1174) :-

'In the interpretation of statutes, the Court always presumes that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of (the statute should have effect. These presumptions will have to be made in the case of rule-making authority also.'

19. To the same effect are the observations contained in *Mulchand v. Mukund* : AIR 1952 Bom 296 , *R. K. Porwal v. State of Maharashtra* : [1981] 2 SCR 866 , *D. K. V. Prasada Rao v. Government of A. P.* : AIR 1984 AP 75 . We should guard against the facile but fallacious reasoning that he who exercises power should show not only that he has such power, but also that he exercised that power honestly, bona fide, fairly and reasonably. We would rather assume all these adjectives for any legislative enactment or subordinate legislative instrument, leaving it to any person who feels aggrieved by such enactment or instrument to prove affirmatively that the presumption in favour of constitutionality, competence, fairness and reasonableness is unsustainable. If it were otherwise, no enactment or subordinate legislative instrument will be safe. If subordinate legislative instruments do constitute, at least in some measure, an extension of the power to legislate, this presumption is essential to safeguard them from wanton attacks on imaginary or flimsy grounds.

20. We were informed that a contrary view seems to have been taken by a Division Bench of this Court in the judgment in O.P. No. 5242 of 1984 by casting the burden of proving the reasonableness and fairness of a rule made by him on the Chief Justice of the High Court as the constitutionally designated rule-making authority and by approximating the exercise of the rule-making power to that of administrative actions. We have perused that judgment, and are constrained to hold that both the assumptions made in that judgment are faulty. The basic principle which one should bear in mind in dealing with an attack against legislation, both primary as well as subordinate, is that there is a presumption -- of course rebuttable -- that the power was properly exercised and that the power shall not be equated with administrative actions. The assumptions to the contrary

informing the decision of the Division Bench do not reflect the correct position in law; and we therefore overruled that decision on these points.

21. The distinction between administrative and legislative functions are too well-known to admit of any doubt. The decisions of the Supreme Court in *Tulsipur Sugar Company v. Notified Area Committee* : [1980]2SCR1111 , and *R. K. Porwal v. State of Maharashtra* : [1981]2SCR866 , highlight these distinctions. So does the decision in *Bates v. Lord Hailsham* (1972) 1 WLR 1373. The price fixation orders under the Essential Commodities Act and the Essential Supplies (Temporary Powers) Act, which were considered by the Supreme Court of India in *P.C.S. Mills v. Union of India* : [1973]2SCR860 , *Sree Meenakshi Mills Ltd. v. Union of India* : [1974]2SCR398 , and *S.I. Syndicate v. Union of India* : [1975]1SCR956 , may perhaps in some sense be legislative in character, but we can hardly accept the submission that the rule/regulation making power shall be approximated to the power of issuing price fixation orders. Nor can we subscribe to the position taken up by the Division Bench equating the power entrusted by the [Constitution of India](#) with the Chief Justice to frame rules relating to service conditions of the employees of the High Court with the exercise of administrative powers which came up for consideration in *E.P. Royappa's case* : (1974)ILLJ172SC , or *Maneka Gandhi's case* : [1978]2SCR621 , or *Ajay Hassia's case* : (1981)ILLJ103SC , or *Nakara's case* : (1983)ILLJ104SC . A subordinate legislative instrument can be struck down in exercise of the power of judicial review only on such grounds as a legislative enactment can be, not by approximating it to an administrative action nor by applying the standards applicable to administrative or executive actions. A rule or a regulation is as much law as an ordinance or enactment is in view of the provisions contained in Article 13(3) of the [Constitution of India](#). We can judge the validity of laws understood as such, only on the basis of the same standards and not differently.

22. We are not persuaded to accept the submission of the petitioners that Ext. P3 is liable to be set aside or declared invalid for the only reason that it was issued on the same day as Ext. P2 or that the Corporation could not have independently applied its mind to the need for changing the conditions of service as suggested. Nor are we persuaded to go in any further detail into the petitioner's submission

that the Corporation was acting under the dictates of the Central Government in issuing Ext. P3 Regulations. We do not think it necessary to consider the decisions reported in *Commr. of Police v. Gordhandas* : [1952]1SCR135 and *C.I.T. v, Mahindra & Mahindra Ltd.* : [1983]144ITR225(SC) , referred to in support of that submission. Reference was made to 'Judicial Review on Administrative Action' by De Smith, and 'Administrative Law' by Prof. HWR Wade. We are afraid that these references are inapposite, except in a case of administrative or quasi judicial/judicial action, where administrative/quasi judicial/judicial discretion is compelled by extraneous authority, including even an official superior, whose directives the authority having discretion, was bound to carry out otherwise. It is indisputable that the regulations framed by the Corporation have to be consistent with the Act and Rules made thereunder, and shall be so framed only for purposes of giving effect to the provisions therein. Such regulations can be effective only with previous approval of the Central Government. It is of course true, that the regulations have to be framed in the first instance by the Corporation, sent up for approval to the Government, and brought into force by notification, after such approval previous to its publication. There is no doubt that antecedent directions for framing regulations to comply with Ext. P2 are neither a proper nor a legal manner of exercise of powers by the Central Government, if we are confining our attention only to the provisions of Section 49 of the Act. The question then is, whether the illegality or irregularity so vitiates Ext. P3 as to render it invalid from its inception. Section 21 of the Act provides :

'In the discharge of its functions under this Act, the Corporation shall be guided by such directions in matters of policy involving public interests as the Central Government may give to it in writing and if any question arises whether a direction relates to a matter of policy involving public interest the decision of the Central Government thereon shall be final.'

It cannot be disputed' that the directions contained in paragraph 4 of Ext. P2 can be related to the power of the Central Government under Section 21. Nor can it be disputed that such policy directions may also comprehend matters covered by the power of the Corporation to make regulations under Section 49 of the Act. It is true that Ext. P2 is issued in exercise of the power under Section 11(2) of the Act.

Section 21 of the Act also could, as well, have been mentioned in Ext. P2. Does the absence of mention of Section 21 of the Act as the source of power for issue of Ext. P2 invalidate it? It is needless to refer to authorities for the proposition that if the power is in existence, the omission to mention the provision under which the power can be exercised, or the mention of a wrong provision, does not invalidate the exercise of the power. We cannot, therefore, agree that the Corporation, in issuing Ext. P3 simultaneously with Ext. P2, in apparent conformity with the directions contained in paragraph 4 of Ext. P2, acted illegally or beyond its competence.

Non-compliance with Section 9A of the I.D. Act:

23. This brings us to the next point raised by the petitioners against Exts. P2 and P3 that they are violative of Section 9A of the I.D. Act. It is urged that the agreements of 1964, 1965 and 1971 supplemented the Blue Order and the Staff Regulations of 1960 and they formed the service conditions of Development Officers. The respondents contend that the agreements were not industrial awards or settlements enforceable under Section 18 or Section 19 of the I.D. Act. Counsel for the respondents also contends that the only manner in which service conditions of employees of the Corporation could be promulgated being by framing regulations under Section 49, apart from orders under Section 11(2) of the Act, the agreements could not be countenanced by the courts. He referred us to the decision in Sukhdev Singh's case : (1975)ILLJ399SC in support of this submission. We are, however, not persuaded to accept this submission in view of the position taken up by the Corporation in regard to the same agreements in earlier litigations on almost the same matter. Dealing with the 1964 agreement, this was what was observed by Chandrasekhara Menon J., in the decision reported in (1976) 2 LLJ 28 : (1976 Lab IC 1242 (Ker) :-

'It would appear that all agreements relating to the terms and conditions of the Development Officers throughout India were entered into with this Federation. On 10th March, 1964, there was a settlement between the Corporation and the Federation which was recorded in the Memorandum of Settlement. The settlement was reached as a result of the discussions between the representatives of the

Corporation and the members of the Negotiating Committee of the Federation.'

That settlement comprehended scales of pay, dearness allowance and performance norms. Referring to subsequent settlements, Chandrasekhara Menon J., proceeds to observe : --

'There were subsequent settlements between the Corporation and the Federation. As a result of negotiations held between the Corporation and the Federation from time to time on the issue of work norms, a subsequent agreement was reached between the two sides on 19-11-1971.'

According to this agreement, Fresh Scheme of Minimum Norms for the Development Officers, and procedure for dealing with below the Minimum Norms Performance were evolved. It is not disputed that the conditions contained in Exts. P2 and P3 do effect alterations in the pre-existing service conditions. As a matter of fact, Clause (4) of Ext. P2 specifically deals with 'revision of terms and conditions of service'. There is a rearrangement of areas and recomputation of expense limits and cost ratio depending on determination of areas on the basis of population. Performance appraisal by the Joint Committee consisting of representatives of both workmen and management has been replaced. In addition to reduction in conveyance allowance, stoppage of increment, and even reduction thereof for consistent failure in performance as per norms have now been prescribed. It is also provided that termination of service for consistent failure in performance will depend largely upon the ipse dixit of the Divisional Manager, without any reference to Joint Committee consisting of representatives of management and employees. These are substantial variations from the terms of the agreements, and did affect the service conditions of Development Officers immediately prior to the issue of orders under Section 11(2) in April, 1976, followed immediately thereafter by regulations under Section 49. The question, which arises for consideration is whether alteration in the conditions of service, unrelated to settlements enforceable under Sections 18 and 19 of the I.D. Act will justify a complaint of violation of Section 9A of the I.D. Act. Let us examine this submission with reference to the terms of that provision : --

'9A Notice of change.-- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change : --

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice ;

Provided that no notice shall be required for effecting any such change -

(a) where the change is effected in pursuance of any settlement, award or decision of the Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950 (48 of 1950); or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette apply.'

According to the above provision, the requirements for its application are that there must be a change in the conditions of service applicable to any workman; such change must be in respect of any matter specified in the Fourth Schedule; for effecting any such change, the workman who is likely to be affected shall be given notice in the prescribed manner of the nature of the change proposed to be effected, and no such change shall be effected within twenty-one days of giving such notice but no such notice is necessary, where the change is effected in pursuance of any settlement, award or decision of the Appellate Tribunal, or where the workman likely to be affected by the change is a person covered by rules specified in Clause (b) of the proviso, or 'any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette'. There is no reference to the conditions of service applicable to the workmen being those

covered by settlements or awards enforceable under Section 18 or Section 19 of the I.D. Act. There need only be conditions of service applicable to workmen. It cannot be disputed that the agreements of 1964, 1965 and 1971 did form, by consensus of parties as conditions of service of Development Officers. Nor can it be disputed that such conditions of service applicable to the workmen were being changed by the issue of Ext. P3. Counsel for the petitioners submits that the previous agreements comprehended wages, customary concessions or privileges etc., and that those are matters governed by items 1, 8 and 10 of the Fourth Schedule of the I.D. Act. We are inclined to examine this submission in view of the caption of and the specific recital in Ext. P2 that it was issued to 'revise terms and conditions of service' of Development Officers. We are not persuaded to accept the submission on behalf of the respondents that the ratio of the decision of the Supreme Court in Bahadur's case. : (1981)ILLJ1SC , can apply only to cases where there are industrial awards or settlements which are enforceable under Sections 18 and 19 of the I.D. Act. We are aware that in the absence of specification in the pleadings about the alteration in the conditions of service, the employer will ordinarily be at a considerable disadvantage. The reply affidavit in which specific reference was made to Section 9A of the I.D. Act and in which alteration in conditions of service relating to wages and other incidental benefits was specifically pleaded was filed in 1982, and we are hearing the Original Petition in 1985, after the matter was fully heard by a Division Bench. In paragraph 22 of the Original Petition which was filed as early as in 1979, it was urged that Exts. P2 and P3 result in 'arbitrary denial of normal increments due, reduction in salary amounting to reduction in provident fund and gratuity, recovery from pay or withholding of increment, or reduction in or termination of service, which are punishments under Regulation 39 of the LIC (Staff) Regulation, without compliance with the fair procedure prescribed therein'. In paragraph 14 of the counter affidavit it was urged that 'a reduction in the remuneration payable and a revision of other terms and conditions applicable to the aforesaid class of employees were called for'. It is true that specific reference to Section 9A of the I.D. Act was not made in the Original Petition. That is understandable, since the first occasion when Development Officers were held to be workmen was in the decision of Lodha J., of the Rajasthan High Court reported in 1982 Lab IC 1864. It

is obvious that the petitioners took their cue from that decision and the observations of Krishna Iyer J., in the decision reported in : (1981)ILLJ1SC . Excepting specific reference to Section 9A of the I.D. Act, the basic facts necessary to make out such a plea were given in the Original Petition. Nor were the respondents left in any doubt about the effect of these submissions. We cannot completely ignore the plea specifically raised in the reply affidavit, in view of the fact that the basic facts had been pleaded and the contentions were raised even in the Original Petition filed in 1979.

24. If, therefore, the conditions of services in relation to one or more of the matters mentioned in the Fourth Schedule were altered to the prejudice of the workmen, Section 9A of the I.D. Act would be attracted. Now that the Supreme Court has held in S. K. Verma v. Mahesh Chandra : (1983)ILLJ429SC , that Development Officers are workmen under the I.D. Act, the decisions of Rajasthan, Patna, Delhi, Madras and Andhra Pradesh High Courts holding the contrary view cannot be valid tender. The further question is whether the non-compliance with Section 9A of the I.D. Act will invalidate Ext. P3. Counsel for the petitioners referred to the decisions of the Supreme Court reported in Indian Oil Corporation v. Workmen : (1975)ILLJ319SC (withdrawal of compensatory allowance) Tata Iron & Steel Co. Ltd. v. Workmen : (1972)ILLJ259SC , (change in the holiday from a Sunday), to sustain the submission that changes even in implied conditions of service and withdrawal of customary privileges and benefits as attempted by Ext. P3 would be changes in conditions of service comprehended by Section 9A of the I.D. Act.

25. Counsel for the respondents submits that in view of Clause (b) of the proviso to Section 9A of the I. D. Act, the Development Officers who are govern'ed by the Staff Regulations issued under Section 49 of the LIC Act are taken out of the purview of the section. We cannot accept this submission, for, we understand Clause (b) of the proviso to mean only that notice is dispensed with only in the case of such persons as are governed by the rules which are specified therein and 'any other rules or regulations that may be notified in this behalf by the appropriate Government in the official Gazette'. It is not the case of the respondents that the rules and regulations issued under the LIC Act had been 'notified in this behalf' as contemplated in Clause (b) of the proviso. This submission cannot therefore be

sustained.

26. Counsel for the respondents contends that even assuming that conditions of service were changed, such change must be proved to be to the prejudice of the workmen, in which case alone, Section 9A of the I.D. Act would be attracted. Reference was made to the decision of the Supreme Court reported in *Hindustan Lever Ltd. v. R. M. Ray* : (1973)ILLJ427SC , to support this submission. He produced a detailed statement of remuneration drawn by some of the Development Officers in the Kerala Region during the financial year 1983-84 in support of his submission that the conditions have only improved and not worsened by Exts. P2 and P3. One of the Development Officers working in Alwaye Branch drew a total amount of Rs. 2,10,675 inclusive of salary, additional conveyance allowance and incentive bonus 16 persons had drawn between Rs. 70,000 and Rs. 1,00,000, whereas nine persons had drawn between Rupees 40,000 and Rs. 70,000. During that year, 90 out of 140 Development Officers had drawn incentive bonus for performance in excess of the minimum norms. For the immediately preceding year, 85 out of 138 Development Officers had drawn incentive bonus, among whom three persons had drawn a total remuneration in excess of Rs. 1,00,000. The cost ratio of some of these officers is said to be as low as 2%, whereas the normal figures were 22% to 25%. Mr. Easwara Iyer submitted that in the case of all these officers, the claim for incentive bonus had resulted in enhancement in wages and improvement in service conditions. The cost ratios of some of the petitioners were in the regions of 50% to 86% of the annual business generated by their organisations. It was submitted that the lethargic and the indolent who refused to work could not earn as much as they were being paid without any relation to the extent of productivity, but that is no reason why it should be held either that there were alterations in conditions of service to their prejudice, or that the introduction of productivity linked wages was unreasonable or arbitrary. It was submitted that this question was considered with reference to pre-existing service conditions by the Delhi High Court in *Mansingh v. Union of India* 1983 Lab IC 1471 and it was found as a matter of fact that Exts. P2 and P3 were improvements upon the conditions contained in the Blue Order. We have no doubt that if we are to consider the Blue Order alone as containing the pre-existing service conditions and we ignore the agreements of 1964, 1965 and 1971, we

have to hold that the service conditions have not been altered to the prejudice of the Development Officers. We cannot however persuade ourselves to agree that those agreements should be totally ignored. We are constrained to hold that they supplement the Blue Order and the Staff Regulations of 1960 as service conditions. Viewed in that perspective, we have no doubt that the service conditions have been altered to the prejudice of the workmen. We have no hesitation to agree that the wage policy to link remuneration to productivity, at least in the nationalised undertakings, is desirable in larger national interests. We also agree that the independent and the indolent can be told that they shall not expect to be paid out of the coffers of the nationalised undertakings without an anxious attempt on their part to produce the minimum volume of business. However, the very short question to be decided is as to whether conditions of service of Development Officers obtaining immediately prior to the issue of orders under Section 11(2) and the regulations under Section 49 of the Act in 1976 and then in 1978 were altered to their prejudice without notice as provided in Section 9A of the I. D. Act. We feel no doubt that in spite of the provision for better earnings for more industrious workmen and greater amount of total remuneration drawn by such industrious workmen, the office and the intent of Ext. P3 was to alter the service conditions in relation to wages and customary privileges and benefits. If such alterations did really work to the prejudice of the workmen, notice under Section 9A of the I.D. Act could not have been avoided. It cannot be disputed that the Development Officers, who were on assured salary with periodical increments, stood to gain on the basis of incentives for larger volume of business generated by them. It is equally beyond dispute that such of the officers as could not or would not generate at least the optimum business were to lose their increments, were to suffer reduction in emoluments, or reversion from or termination of service as a consequence of the revised productivity-linked wages policy devised by Ext. P3. It is also true that there is provision for appeals to the Divisional Manager, or to the Corporation directly, and opportunities are provided to explain the circumstances, under which the optimum business could not be canvassed during the particular appraisal year by the employees concerned. Here again, the system obtaining under the Blue Order and the 1960 Staff Regulations as altered by the agreements of 1964, 1965 and 1971 ceased to be available with

the issue of 1976 Regulations, which were replaced by the 1978 Regulations. In relation to these which the petitioners claim to be customary concessions or privileges, there was alteration in conditions of service. We are, therefore, constrained to hold, that in spite of the desirability of a productivity-linked wage structure, the provision for explanations by the concerned employees of his failure of achieve the minimum standards of business, and the appeals to higher authorities from any decision at lower level, conditions of service referable to matters included in the Fourth Schedule of the I.D. Act have been altered to the prejudice of the workmen concerned by the issue of Exts. P2 and P3, and that such alterations without compliance with the requirements of Section 9A of the I.D. Act cannot but be held to be invalid from their very inception.

Are Exts. P2 and P3 arbitrary and discriminatory?

27. Counsel for the petitioners submits that the terms of Exts. P2 and P3 are arbitrary and discriminatory for two reasons. It is submitted that among four groups of employees of the Corporation, only the Development Officers in Class II are picked out for hostile treatment, whereas the remuneration and other conditions of service of Class I Officers and Class III Supervisory and Clerical employees of the Corporation are not at all affected by Exts. P2 and P3. It is also submitted that the expense limit is arbitrarily fixed in relation to operational areas determined on the basis of population irrespective of local conditions and that the Development Officers have to suffer penal consequences, if annual remuneration in excess of the expense limit is more than the specified percentage of eligible premium. These determinates are said to have been chosen unrealistically, arbitrarily and therefore vindictively.

28. As far as the first of these submissions is concerned, it cannot be disputed that the Development Officers were being treated as a well defined and separate class ever since the formation of the Corporation. They stand out as a separate class by reason of the nature of the duties performed by them, the service conditions under which they were working and the benefits which they were enjoying unlike the other categories of employees of the Corporation, the Development Officers are working in the field with no fixed hours of work; and the only method of measuring

their work is to assess the volume of business with reference to ascertainable standards. A complaint that other officers of the Corporation who are distinct and separate classes are dealt with differently cannot at all be countenanced. Reference in this connection may be made to the observations contained in the decision of the Supreme Court reported in *Ajay Kumar v. Union of India* AIR 1984 SC 1130 : 1984 Lab IC 691

29. We, have already dealt in some detail with the latter aspect of the submission. We have held that determination of operational areas with reference to population cannot be held to be per se unreasonable, arbitrary or discriminatory. The fact that even in the very same areas where the petitioners are working, other Development Officers were able to generate greater volume of business and reduce the cost ratio far below the expense limits so as to earn incentives, negatives, the tenability of the submission that the determination of operational areas, expense limits and cost ratio is arbitrary and discriminatory. We have therefore no hesitation in rejecting the petitioners submissions in this regard.

30. Shri Narayanan Poti, counsel appearing for the petitioners submits that the result of the declaration of invalidity of Exts. P2 and P3 should be that the invalidity and unenforceability as now declared should be effective from the very inception of Exts. P2 and P3; the first because of absence of power and second because of the non-compliance with an essential statutory requirement which incorporates principles of natural justice. Reference was made to the decision of Letham C.J., reported in *South Australia v. The Commonwealth* (1941) 65 CLR 373, where it was held that if the exercise of the power was beyond competence, such exercise was ab initio invalid. Reference was also made to Prof HWR Wade on Administrative Law, where it was stated that 'once the Court has declared that some administrative act is a nullity, the situation is as if nothing had happened' (page 40) and 'an order which is ultra vires within any of the ramifications of that doctrine, e.g. because of unreasonableness or wrong grounds or violation of statutory requirements can only be void, once the Court condemns it as void, it is seen to have been destitute of all legal effect from the outset'. Counsel also refers us to the decisions reported in *B. M. Lakhani v. Malkapur Municipality*, : AIR 1970 SC1002 . *A. V. Nachane v. Union of India* : (1982)ILLJ110SC and *Prabodh Verma*

v. State of U. P. : [1985]1SCR216 , in support of this submission. The decision of the Supreme Court reported in Nawabkhan v. State of Gujarat : 1974 CriLJ1054 , seems to us to provide a complete answer to the points raised by the petitioners'. It was held that an illegal or invalid exercise of power may be voidable in the sense that it may remain in force till such time as a competent Court declares it invalid but once a declaration is so made, such declaration goes back to its nativity and the order becomes unenforceable ab initio. It is in this sense and in this sense alone can a distinction be made between void and voidable orders. The exercise of power becomes void when it is so declared. The same principle is stated by Friedman in his Treatise on Principles of Australian Administrative Law as follows :
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'A regulation which falls outside the scope of the powers conferred by Parliament will, if contested, be held void by Courts as ultra vires.'

A further consideration of this point seems to be academic at this stage in view of the fact that we have declared Exts. P2 and P3 ultra vires of Section 11(2) of the Act, and violative of Section 9A of the I.D. Act. On the basis of the observation of the Supreme Court contained in the decision reported in Nawabkhan v. State of Gujarat : 1974 CriLJ1054 , the declaration dates back to the date of promulgation of Exts. P2 and P3. The effect of such declaration is that Exts. P2 and P3 were never validly enacted.

Effect of Act 1 of 1981 on the validity of Exts. P2 and P3.

31. Counsel for the petitioners submits that what Act 1 of 1981 seeks to resurrect are these instruments which were invalid from their inception and have been so declared. It is his submission that Act 1 of 1981 can operate only if Exts. P2 and P3 were legally in force. He draws sustenance for this submission from Budhan Singh v. Babi Bux : [1970]2SCR10 . It is further submitted that the delay of the Court in granting the relief shall not be to the benefit of one of the parties due to the intervention of events or legislation during the pendency of proceedings. Shri Easwara Iyer appearing for the respondents contends that legal enforceability as a rule was sought to be breathed into Exts. P2 and P3 which were factually in force at the time when Act 1 of 1981 was enacted. According to him, Exts. P2 and P3

were not declared by any competent Court of law to be invalid or unenforceable at the time when Act 1 of 1981 was promulgated. Exts. P2 and P3 were therefore legally and factually in force at that time. The provisions of Act 1 of 1981, according to him, have to be interpreted and understood with reference to this factual situation and not with reference to their vulnerability. It is further submitted that a change of law during the pendency of an action is such a subsequent event as could not but be taken into account in moulding the relief. It is his submission that effect is sought to be given to Exts. P2 and P3 as rules deemed to have been made under Section 48(2)(cc) of the Act, notwithstanding any judgment of any Court etc., or any provision contained in the I.D. Act or any other law for the time being in force, and that even Section 11(2) of the Act is within the comprehension of those non obstante provisions, with the result that Ext. P2 is valid notwithstanding the judgment of the Supreme Court reported in LIC of India v. D. J. Bahadur : (1981)ILLJ1SC or any other decision following that and the provisions of Section 11(2) which were understood by the Supreme Court in that decision to confer power in the Central Government to issue orders only in relation to the transfer and integration of employees and standardisation of the conditions of service of the transferred employees. Likewise, it is submitted that Ext. P3 is given validity notwithstanding the provisions contained in Section 9A of the I.D. Act. He also submitted that by virtue of Section 48(2C) of the Act introduced by Section 2 of the Act 1 of 1981, 'the provisions of Clause (cc) of Sub-section (2) and Sub-section (2C) 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 etc.' Ext. P3 regulation shall have effect as rules from the date of its promulgation, viz., 19-12-1978. According to him, Section 2C creates a fiction that Section 48(2)(cc) is deemed to have had effect from 19-12-1978 so as to validate Ext. P3. Regulation and Ext. P2 order as Rules made thereunder, notwithstanding any judgment etc., the I.D. Act or any other law. He relied upon a decision of a Full Bench of this Court in Sahadeva Kurup v. Board of Revenue ILR (1979) Ker 275, upholding the validity of an amendment to the Kerala State and Subordinate Services Rules with effect from the date of promulgation of those rules -- 17-12-1958 -- in exercise of the power under Section 2 of the Kerala Public Services Act, 1968 since Section 3 of

that Act had provided for continuance of existing rules as if made under that Act by deeming that the 'Act had been in force on the date on which such rules were made'. He also refers to the decision of the Supreme Court in Nachane's case : (1982)ILLJ110SC .

32. The validity of Section 48(2)(cc) of the Act conferring rule-making powers regarding service conditions of all employees of the Corporation and deeming Regulations etc., made under Section 49(2)(b) and (bb) as rules made thereunder was upheld by the Supreme Court in Nachane's case : (1982)ILLJ110SC . The Court had also considered the effect of Section 48(2C) of the Act whereunder retrospective effect was sought to be given to Section 48(2)(cc) of the Act and the rules deemed to have been made thereunder. It was held (Para 9):-

'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.'

and (para 10)

'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 (2-C) of Section 48 of the Life Insurance Corporation Act which is similar in terms insofar 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.'

It is true that no question of validation of any regulation, or order in the nature of Exts. P3 and P2 from a date prior to the date of commencement of the Act had come up for consideration in that decision. Nor did the Supreme Court have any occasion to consider the question whether an order or a regulation which was ultra vires the unamended Act and contrary to the I.D. Act could be within the comprehension of the expression 'The Regulations and other provisions as in

force on the commencement of Life Insurance Corporation (Amendment) Act, 1981.' However, the validity of Section 48(2C) of the Act in so far as it declares that rules made or deemed to have been made thereunder shall be operative notwithstanding the provisions of the I.D. Act or any other law for the time being in force, having been upheld except to the extent of the attempt contained in Rule 3 of Life Insurance Corporation of India Class III and Class IV Employees (Bonus and Dearness Allowance) Rules 1981 to nullify the effect of the writ of mandamus issued in Bahadur's case : (1981)ILLJ1SC , we need not consider the question any further.

33. Though this may be sufficient to dispose of this point, we feel that it is desirable that other aspects of the matter argued by counsel may also be considered in view of the fact that the matter may be taken up in appeal by either side. Counsel for the petitioners submits that Exts. P2 and P3 impose unreasonable restrictions on the right of the petitioners to receive increment in the scale of salary, which is property within the comprehension of Article 19(1)(f) of the [Constitution of India](#). It is submitted that those instruments are liable to be declared invalid as violating Articles 19(1)(f) and 31 of the [Constitution of India](#), since the right to property ceased to be a fundamental right only with the deletion of Articles 19(1)(f) and 31 of the Constitution by the [Constitution of India](#) (Fortyfourth Amendment) Act with effect from 20-6-1979. It is urged that it was held by the majority of judges in Madan Mohan Pathak's case : (1978)ILLJ406SC that deprivation of non-profit sharing bonus earned by Class III and Class IV employees of the Corporation as per industrial agreements did amount to deprivation of property contrary to Articles 19(1)(f) and 31(2) of the [Constitution of India](#). It is submitted that the same principle should apply with greater vigour if the assured incremental wages are sought to be denied to Development Officers who are also now held to be workmen. Counsel for the petitioners submits that the fact that a Development Officer, who loses increments due to performance below the minimum norms in one appraisal year can earn incentives during subsequent years if he performs better, does not take away the sting of the denial and deprivation of increment in the scale of salary. That reduction in scale of salary is obviously never restored, even if he performs up to the minimum norms during subsequent years. He can earn incentives unrelated to increments, which he had already lost for all times,

only if he performs better than the minimum norms. Counsel for the respondents submits that even if Exts. P2 and P3 impose restrictions to the detriment of the workmen concerned, a comprehensive scheme of wage-revision attempting to relate increments in scales of salary to productivity is only a reasonable restriction in the interest of general public, which the State is entitled to impose in view of the provisions contained in Article 19(5) of the [Constitution of India](#) as it stood prior to the Forty-fourth Amendment. We have already indicated earlier that we cannot treat a wage-policy relating the quantum of wages to productivity as altogether obnoxious. Though we have opined the alteration of wage structure to the prejudice of the workmen should be tested with reference to the statutory requirement of Section 9A of the I.D. Act, we are not persuaded to hold that the revision in the wage structure so as to relate it to productivity is an altogether unreasonable restriction in the context of interests of general public. Nor are we persuaded to hold that the illegality involved in the violation of Section 9A of the I.D. Act or Section 11(2) of the Act in the issue of Exts. P3 and P2, without anything more, make those instruments unconstitutional as violating Article 19(1)(f) of the [Constitution of India](#). The situations considered by the Supreme Court in Madan Mohan Pathak's case : (1978)ILLJ406SC , and Nachane's case : (1982)ILLJ110SC , were different in the sense that the enactment in the former case and the rule in the latter case were meant to nullify judgments upholding settlements duly entered into and could not therefore be held to be in the interests of the general public.

34. The further point which we have to consider is whether the validation attempted by Section 2 of Act 1 of 1981 would cover Exts. P2 and P3 which were not legally in force on the date of promulgation of the amending Act. The decisions which we have to notice in this regard are Shama Rao v. Union Territory of Pondicherry : [1967]2SCR650 , and Akar v. Attorney General of Sierra Leone (1969) 3 All ER 384. In the former, the majority of the judges of the Supreme Court, per Subba Rao C.J., Shelat and Mitter JJ. held that 'where there is abdication or effacement of the legislature concerned in truth and in fact acts contrary to the instrument which constituted it, and the statute would be void and still born'. In the latter, Lord Morris of Borth-y-Gest held;

'It is to be observed that Act No. 39 does not refer to Act No. 12. It does not attempt any process of re-enactment. It purports to amend Sub-section (4) of Section 23 of the Constitution by adding a new paragraph; The--new paragraph refers to Sub-section (3) and Sub-section (4) of Section 1. In the Constitution unless it had been validly amended there were no such subsections of Section 1. Had the provisions of Section 2 of Act No. 12 been valid then there would have been the addition to Section 1 of the Constitution of such sub-sections. Act No. 39 needed as a basis an assumption that Act No. 12 was valid and so was an existing Act. That was an incorrect assumption. Their Lordships are quite unable to accept the contention that Act No. 39 should be regarded as impliedly reviving or re-enacting any invalid provisions of Act No. 12. The provisions of Section 2 of Act No. 12 were invalid when the Act was passed and assented to and the provisions must be treated as having been non-existent. There is no provision in Act No. 39 which purports or sets out to give them life. Although Act No. 39 was passed in accordance with the provisions of Section 43 it becomes meaningless once the provisions of Section 2 of Act No. 12 are ignored as they must be.'

35. We are afraid that the principles of these decisions do not apply to the present case. It is true that Section 2 of Act 1 of 1981 does not re-enact Exts. P3 and P2 but only seeks to confer legality on them by deeming such instruments to be rules made under Section 48(2)(cc) of the Act, by projecting the rule-making power to the date of issue of the rules which were deemed to have been made thereunder. It is competent for the legislature, in exercise of its legislative power to make a retrospective statute and also to validate provisions which were declared invalid by providing the legal basis which was found lacking and which led to the declaration of such invalidity. If the legal foundation was supplied retrospectively and that provision and the rules made thereunder could be operative from the dates of their promulgation as provided in Section 48(2C) of the Act as amended by Act 1 of 1981, we cannot but hold that notwithstanding the fact that Exts. P3 and P2 were not legally in force on the date of promulgation of Act 1 of 1981 and therefore Section 48(2A) would not confer validity on them, the provisions of Section 48(2C) to the effect that 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 shall also be deemed to have had effect from that date notwithstanding any judgment

etc., has efficacy to validate Exts. P3 and P2 as rules under Section 48(2)(cc) of the Act. Section 48(2)(cc) is projected back to the date of promulgation of Exts. P2 and P3 namely 19-12-1978, after providing that such deemed rules could be made notwithstanding the provisions of the I.D. Act or any other law etc., for the time being in force. This naturally enables the framing of rules altering service conditions to the prejudice of the workmen without compliance with Section 9A of the I.D. Act or without regard to Section 11(2) of the Act.

36. Counsel for the petitioners, however, submits that it has been held by the Supreme Court in D. J. Bahadur's case : (1981)ILLJ1SC . that the provisions of the Life Insurance Corporation Act are general provisions in relation to Industrial Relations and would be superseded by the provisions of the I.D. Act in relation to such matters. This pronouncement was made in spite of the fact that Section 11(2) of the Act did contain a non obstante clause, almost identical to the similar provision in Section 48(2C) of the Act as amended by Act 1 of 1981. We are also referred to the following observations in the majority decision in D. J. Bahadur's case : (1981)ILLJ1SC , that 'with reference to industrial disputes between employers and workmen the Industrial Disputes Act is a special statute and the Life Insurance Corporation Act does not speak at all with specific reference to workmen. The workmen qua workmen and industrial disputes between workmen and the employer as such as beyond the orbit of and have no specific or special place in the scheme of the Life Insurance Corporation Act', and observations in the concurrent judgment of Chinnappa Reddy J., in Nachane's case : (1982)ILLJ110SC :-

'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.'

It is therefore submitted that it should naturally follow that the provisions of Exts. P3 and P2, deemed as rules made under Section 48(2)(cc) of the Act, are not

efficacious to alter the conditions of services of Development Officers in view of the provisions of the I.D. Act. But we cannot ignore the specific ruling contained in Nachane's case : (1982)ILLJ110SC , specifically on this point that 'in respect of matters covered by the rules, the provisions of the I.D. Act or any other law will not be operative'. We have, therefore, to hold that the provisions of Section 48(2)(cc) read with Section 48(2C) of the Act validates Ext. P3 as rules made in exercise of the power under Section 48(2)(cc) and has efficacy in spite of the provisions contained in the Industrial Disputes Act and the observations of the Supreme Court in D. J. Bahadur's case : (1981)ILLJ1SC , on the effect of Section 11(2) of the Act.

37. Our conclusions on the points raised are the following: --

(i) Section 11(2) of the Act authorises the Central Government to alter the conditions of service of the employees of the Corporation only to effectuate the transfer and integration of service of the transferred employees and to standardise and rationalise the conditions of service of such transferred employees immediately upon and as a part of the process of such transfer and integration.

(ii) Ext. P2 did overstep the above statutory process and was hence beyond competence.

(iii) Ext. P3 was not invalid, since the Central Government had the necessary power to issue policy directions to the Corporation under Section 21 of the Act.

(iv) Exts. P2 and P3 did alter the conditions of service of the petitioners to their prejudice without compliance with Section 9A of the I.D. Act and were therefore invalid ab initio.

(v) Exts. P2 and P3 are not ultra vires Articles 14 and 16 of the [Constitution of India](#).

and

(vi) Act 1 of 1981 validated Exts. P2 and P3 with retrospective effect from the date of their promulgation.

In view of our conclusions on the last point, we have to and do hereby dismiss this Original Petition. There will, however, be no order as to costs.

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