Life Insurance Corporation of India

Vs

Sunil Kumar Mukherjee & Ors.

Civil Appeals Nos. 909 to 923 of 1963

(K. C.Das Gupta, K. N. Wanchoo, P. B. Gajendragadkar JJ)

22.11.1963

JUDGMENT

GAJENDRAGADKAR, J. –

This is a group of 15 appeals which raise a common question about the validity of the orders passed by the appellant Life Insurance Corporation of India terminating the services of its employees who are the respondents in these appeals. The facts which give rise to the present disputes between the parties in all the 15 cases are substantially similar, and so, it would be enough if we state the relevant facts in one of these cases. One of the respondents is Sunil Kumar Mukherjee. He was in the insurance line since June, 1941 and had been confirmed in his service by the Metropolitan Insurance Co. Ltd. in March, 1950. Since about 1953, he had been working as Inspector of the said Company, and since March 18, 1955, he was holding the appointment as Inspector at Barrackpore. The appellant which took over the controlled business of the Metropolitan Insurance Co. Ltd., terminated the services of Mukherjee by an order passed on the 16th October, 1958. The respondent then moved the Calcutta High Court under Art. 226 of the Constitution and prayed for a writ of certiorari or other appropriate writ or order quashing the said impugned order of discharge passed against him. Sinha J. who heard the writ petition, allowed the petition and directed that a writ in the nature of certiorari quashing and/or setting aside the impugned order be issued. A further writ in the nature of mandamus was also issued directing the respondents to the writ petition not to give effect to the said impugned order. To the petition filed by the respondent, he had impleaded eight respondents, the principal amongst them being the appellant Corporation and the Union of India.

Aggrieved by the decision of Sinha J. the appellants preferred an appeal under the Letters Patent before a Division Bench of the said High Court Bose C.J. and Debabrata Mokerjee J. who heard the Letters Patent appeal substantially agreed with the view taken by Sinha J. and confirmed the order passed by him. The appellants then applied for and obtained a certificate of fitness from the said High Court and it is with the said certificate that they have come to this Court in appeal. On similar facts, the appellants have brought to this Court the other fourteen appeals, and a common question which has been raised by the learned Solicitor-General on behalf of the appellants is that the High Court was in error in holding that the orders of discharge passed respectively against the respondents in these appeals were invalid.

Before dealing with the points raised by the appellants in the present appeals, it would be convenient to set out the relevant orders passed in respect of the appointment and discharge of the respondent Mr. Mukherjee. When Mr. Mukherjee was appointed a whole-time Inspector by the Metropolitan Insurance Co. Ltd. on the 18th or 19th March, 1955, the terms and conditions of his employment were communicated to him by a document which contained 14 clauses (Annexure A to

the W.P.). Clause 13 of this document provided that the appointment was subject to termination without notice in case he was found guilty of fraud, mis-appropriation, breach of discipline, insubordination, acting detrimental to the interests of the company, disloyalty or gross neglect of duty : provided, however, that he would be entitled to 30 days' notice if his services were terminated for any other reason. It is thus clear that under the terms and conditions of Mr. Mukherjee's original appointment with the Insurance Co., he was liable to be dismissed for misconduct and was entitled to receive 30 days' notice if his services were terminated for reasons other than misconduct.

When the Life Insurance Corpn. took over the business of the Metropolitan Insurance Co. Ltd., an order was issued in favour of Mr. Mukherjee on the 14th February, 1958. By this order it was stated that in terms of Government Order No. 53(1) I.S.N. (1) 57 dated 30th December, 1957, he was required to work as a Field Officer. It was also added that he would continue to be attached to Barrackpore Branch Office until further orders. This order was issued by the Divisional Manager. Thus, it appears that after this order was given to Mr. Mukherjee, he began to work as a Field Officer by virtue of his appointment under the relevant Government Order. One of the points which we have to consider in the present appeal is : what is the effect of this order of appointment ?

On the 16th October, 1958, the impugned order terminating Mr. Mukherjee's services was passed. This order said that in terms of section 5 of the Categorisation circular of the 2nd December, 1957, Mr. Mukherjee's case was examined by the Special Committee appointed by the Board of the Corporation to review the cases of Ex-Branch Secretaries, etc., and it was added that in accordance with the recommendations of the Committee which had been accepted by the Corporation, it had been decided to terminate his services with immediate effect. Mr. Mukherjee was also told that he would be paid his emoluments up to the current month and one month's salary in lieu of notice. It is the validity of this order which has been successfully challenged by Mr. Mukherjee before the Calcutta High Court, and the learned Solicitor-General contends that the High Court was in error in upholding Mr. Mukherjee's plea.

The history of the nationalisation of the Life Insurance business in this country is well-known. On the 19th January, 1956, the Life Insurance (Emergency Provisions) Ordinance (No. 1 of 1956) was promulgated by the President for the purpose of taking over, in the public interest, the management of the life insurance business, pending nationalisation of such business. In due course, Act No. 9 of 1956 was passed which took the place of the original Ordinance and it came into effect on the 21st March, 1956. This A ct was followed by Act 31 of 1956 (hereinafter called 'the Act') which was published on the 1st July, 1956. The appointed date under s. 3 of this Act was the 1st of September, 1956. Section 7 of the Act provides that on the appointed day there shall be transferred to and vested in the Corporation all the assets and liabilities appertaining to the controlled business of all insurers. That is how the Life Insurance Corporation took over all the assets and liabilities appertaining to the controlled business of all the insurers in this country. As a result of this taking over, s. 11 proceeded to make a provision for the transfer of service of existing employees of insurers to the Corporation. For the purpose of these appeals, it is necessary to set out sec. 11(1) & (2).

These sub-section read as under :-

> "(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 sub-section shall apply to any such employee who has, by notice in writing given to the Central Government prior to the appointed day, intimated his intention of not becoming an employee of the Corporation.
>
> (2) Where the Central Government is satisfied that for the purpose of securing uniformity in the scales of remuneration and the other terms and conditions of service applicable to employees of insurers whose controlled business has been transferred to, and vested in, the Corporation, it is necessary so to do, or that, in the interests of the Corporation and its policy-holders, a reduction in the remuneration payable, or a revision of the other terms and conditions of service applicable, to employees or any class of them is called for, the Central Government may, notwithstanding any thing 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 & 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."

Then follow an explanation and sub-sections (3) and (4) which are not relevant for our purpose. It would thus be seen that under s. 11(1), persons who were employed by an insurer wholly or mainly in connection with his controlled business before the appointed day, became the employees of the Corporation as from the appointed day. After they thus became the employees of the Corporation, they held their offices by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges. In other words, on the taking over of the controlled business by the Corporation, the employees of the insurers to whom s. 11(1) applied became the employees of the Corporation, but their employment continued to be on the same terms and conditions as before. This state of affairs was to continue until the employment of the employee was brought to an end or until his remuneration, terms and conditions were duly altered by the Corporation. The scheme of s. 11(1) is thus clear. With the transfer of the controlled business from the insurer to the Corporation, the employees of the former became the employees of the latter, but they were governed by the same terms and conditions until they were altered by the latter.

The proviso to s. 11(1) shows that if any employee had, by notice in writing, conveyed to the Central Government prior to the appointed day his intention not to become an employee of the Corporation, his case was outside s. 11(1). In other words, such an employee would not become the employee of the Corporation and his case would have to be dealt with apart from s. 11(1) & (2).

Section 11(2) as it originally stood was substantially modified in 1957, and the plain effect of the provisions contained in the said sub-section as modified, is that the Central Government is given the power to 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. It is significant that this power can be exercised by the Central Government notwithstanding anything contained in sub-section (1) or in the Industrial Disputes Act, 1947, or in any other law, or in any award, settlement or agreement for the time being in force. 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. Having conferred such wide power on the Central Government, s. 11(2) further provides that if the alteration made by the Central Government in the terms and conditions of his service 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. It is thus clear that in regard to cases which fall under s. 11(2) if as a result of the alteration made by the Central Government any employee does not want to work with the Corporation, he is given the option to leave its employment on payment of compensation provided by the last part of s. 11(2). Thus, the scheme of the two sub-sections of s. 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 s. 11(2).

After the Corporation took over the controlled business of insurers under the Act, two circulars were issued by the Managing Director, the first on the 30th September, 1957 and the second on the 2nd December, 1957. These circulars need not detain us at this stage, because, by themselves, they were without any authority in law. However, we would have occasion to refer to the second circular later on.

On the 30th December, 1957, an order was issued by the Central Government in exercise of the powers conferred on it by s. 11(2) of the Act. This order was issued on blue paper and has been described by the High Court as the 'blue order'. We will refer to this order as 'the order' in the course of this judgment. This order was issued because the Central Government was satisfied that for the purpose of securing uniformity in the scales of remuneration and the other terms and conditions of service applicable to certain classes of employees of insurers, it was necessary to clarify the position by making specific and clear provisions in that behalf. The object of the order was to secure the interests of the Corporation and its policy-holders by making a reduction in the remuneration payable to the employees governed by the order, and effecting a revision of the other terms and conditions applicable to them. This order was confined in its operation to the officers of the insurers who were known as 'Field Officers' and so, the order was named as the Life Insurance Corporation Field Officers' (Alteration of Remuneration and other Terms and Conditions of Service) Order, 1957. It consists of 12 clauses. Clause 2 defines, inter alia, a Field Officer. In 1962, the designation 'Field Officer' was changed into a "Development Officer", though curiously enough the title of the Order still refers to the Field Officer and does not incorporate a consequential amendment in the said designation. The definition of the "Development Officer" shows that it takes in a person however he was designated before the appointed day if he was wholly or mainly engaged in the development of new life insurance business for the insurer by supervising, either directly or through one or more intermediaries, the work of persons procuring or soliciting new life insurance business, and who was remunerated by a regular monthly salary, and who has become an employee of the Corporation under s. 11 of the Act. This definition excludes certain categories of employees to which it is not necessary to refer. It is thus clear that the Order was intended to prescribe the terms and conditions of service in respect of Development Officers who had become employees of the

Corporation under s. 11(1) of the Act. Clause 3 of the Order prescribes the duties of the Development Officer. Clause 4 prohibits the Development Officers from engaging themselves in certain activities. Clause 5 provides for the scales of pay and allowances. Clause 6 deals with the matter of leave and retirement, and provides that in the matter of leave and retirement, Development Officers shall be governed by the Life Insurance Corporation (Staff) Regulations, 1960, as amended for time to time. Clause 7 provides for increments, and clause 8 deals with new business bonus, while clause 9 refers to promotion of Development Officers. Clause 10 is relevant for our purpose and must be set out in full :

> "10. Penalties and termination of service :
>
> (a) In case of unsatisfactory performance of duties by a Development Officer or if a Development Officer shows negligence in his work or is guilty misconduct or is otherwise incapable of discharging his duties satisfactorily, his remuneration may be reduced of his services may be terminated, after giving him an opportunity of showing cause against the action proposed to be taken in regard to him and after conducting such enquiry as the Corporation thinks fit.
>
> (b) The services of any Development Officer may, with the prior approval of the Chairman of the Corporation, be terminated without assigning any reason after giving the Development Officer three months' notice thereof in writing".

Clause 11 prescribes that the actual pay and allowances admissible to any Development Officer under the scale of pay specified in paragraph 5 shall be determined in accordance with such principles as may be laid down by the Corporation by regulations made in this behalf under sec. 49 of the Act. The last clause lays down that if a doubt arises as to the interpretation of any of the provisions of the Order, the matter will be decided by the Central Government.

It is thus clear that in regard to the Field Officers subsequently designated as Development Officers who became the employees of the Corporation after the appointed day, the Order provides a self-contained code in dealing with the material terms and conditions of service of the said Officers. In regard to the scales of pay and allowances which have been prescribed by clause 5, clause 11 contemplates that the actual pay and allowances admissible to any Development Officer will have to be determined in accordance with the principles which the relevant regulation would in that behalf lay down, and so, in the matter of scales of pay and allowances clause 5 read with clause 11 has to be co-related with the relevant regulation which had to be subsequently framed. In regard to the other terms and conditions of service, however, the Order makes specific and clear provisions. That being so, there can be no doubt that in regard to the Officers to whom the Order applies, if any action is intended to be taken for the termination or their services, it has to be taken under clause 10(a) or (b). Clause 10(a) deals with two alternatives; it empowers the appropriate authority to reduce the remuneration of the Development Officer or to terminate his services; in either case, an opportunity of showing cause against the action proposed to be taken has to be given to him, and an enquiry has to be conducted in the manner which the Corporation may think fit. If the Development Officer shows negligence in his work, or is guilty of misconduct, or is otherwise incapable of discharging his duties satisfactorily, the Corporation may reduce his remuneration or may terminate his service; but that can be done only after complying with the conditions prescribed by clause 10(a).

Clause 10(b) empowers the Corporation to terminate the services of the Development Officer

without assigning any reason and without holding any enquiry or giving him an opportunity to show cause, provided, of course, the order terminating his services is passed with the prior approval of the Chairman of the Corporation. This power can be exercised without complying with clause 10(a) and is independent of it. Thus, in the matter of penalties and termination of service, two alternative powers are conferred on the authority and they are contained in sub-clauses (a) and (b) of clause 10.

As envisaged by clause 11 of the Order, Regulations were framed in 1958 by the Life Insurance Corporation under s. 49 of the Act read with clause 11 of the Order. These Regulations contain five clauses; the first gives the title of the Regulations; the 2nd defines the "Categorisation Order" which is the same as the blue Order, as well as the "Corporation" and the "Field Officer". Regulation 3 deals with the conveyance allowance. Regulation 4 provides for the manner of fixing the pay of the Development Officer. Regulation 4(1) lays down that the basic pay in the scale of pay prescribed for Field Officers by the Order shall be so fixed that the said pay together with the dearness allowance and conveyance allowance is not less than the total monthly remuneration to which the Officer was entitled before the 31st August, 1956. Regulation 4(2) provides that where the work of the Field Officer has been either below or above the adequate standard, the Corporation may fix his basic pay at such stage in the scale as it may think fit. Regulation 4(3) prescribes that in judging a Field Officer's work, the Corporation shall observe the principles contained in the circular issued by the Managing Director on the 2nd December, 1957. Regulation 5 provides for the computation of total monthly remuneration which was paid to Officer on the 31st August, 1956. It will be noticed that clause 4(3) of the Regulations makes the circular issued by the Managing Director on the 2nd December, 1957 a part of the regulation by treating it as its annexure and referring to its provisions for the purpose of determining the remuneration payable to the Development Officer. That is how the said circular which, when it was issued, had no legal authority, has now become valid as a part of the Regulations issued by the Corporation under s. 49 of the Act read with clause 11 of the Order.

This circular contains five paragraphs. The object of the material provisions of this circular is to determine the quality of the work which the Development Officer puts in which would afford a basis for fixing his remuneration. Paragraph 4 of this circular deals with the problem of fitting in the respective Development Officers in the pay scales provided by clause 5 of the Order. It consists of eight clauses (a) to (h). In the present appeals, we are concerned with the last of these clauses. Paragraph 4, clause (h) reads thus :-

> "If the actual performance is less than 50 - of the revised quota, the cases of such Field Officers will be referred to a Committee to be specially appointed in each Zone. The Committee will go through the past records of such Field Officers and decide whether they could be continued as Field Officers either as Probationers or on substantially reduced remunerations. In the case of those who cannot be continued as Field Officers, the Committee will examine whether any of them could be absorbed in administration and where this is possible, the Committee will fix the remuneration in accordance with the rules to be prescribed. Where the Committee decides that the poor performance of a Field Officer was not due to circumstances beyond his control or that he has made no efforts and not shown inclination or willingness to work, the services of such Filed Officers will be terminated."

It is clear that paragraph 4(h) deals with the cases of persons whose actual performance is less than 50% of the revised quota, and as such, who are regarded as ineligible for fitting in the employment of the Corporation. Their cases are required to be referred to the Committee specially appointed in each Zone, and on examining the record of these Officers, if the Committee comes to the conclusion

that some of them cannot be continued as Field Officers, it may enquire whether any of them could be absorbed in administration, and if yes, their remuneration may be suitably fixed : if the Committee thought that the poor performance was not due to circumstances beyond his control, or that he made on efforts or showed no inclination or willingness to work, the services of such Field Officer will be terminated. Paragraph 5 deals with the question of ex-Branch Secretaries and Supervisory Officers, and it provides that if their work is found to be unsatisfactory, the Committee may recommend termination of the services of the officers concerned. In other cases, the Committee will make recommendations as to whether they should continue such Inspectors as Field Officers and if yes, on what remuneration; or whether their services could be utilised in any other capacity in the Corporation, and if yes, on what remuneration ?

The learned Solicitor-General has contended that when the Corporation took over the controlled business of insurers in this country on the appointed day, it was found that a large number of employees in the category of Field Officers were either incompetent or unwilling to work efficiently, and so, it was thought desirable, in the interests of the Corporation itself and in the interests of the policy-holders, to terminate their services. That is why a well-devised scheme was framed by the circular and adopted in the Regulations laying down principles for determining the efficiency of the work done by the said Officers. He urges that by the application of the principle laid down by paragraph 4(h) of the circular, it was competent to the Corporation to terminate the services of the respondents, and that is what in fact has been done in each of the cases before us. In support of this plea, he has relied on the fact that paragraph 4(h) empowers the Corporation to terminate the services of incompetent officers and paragraph 5 also gives the same power in respect of ex-Branch Secretaries and Supervisory Officers. The argument is that where cases are dealt with under the provisions of paragraph 4(h) or paragraph 5 of the circular, there can be no question of applying the provisions of clause 10 of the Order.

It is common ground that before terminating the services of the respective respondents in the group of appeals before us, no enquiry has been held and no opportunity has been given to the said officers as required by clause 10(a) of the Order. It is also common ground that the impugned termination of their services has not been effected under clause 10(b) of the Order. The respondents' contention is that the termination of their services can be brought about only under clause 10(a) or 10(b) of the Order, and since it has not been so brought about, the impugned orders are invalid. On the other hand, the learned Solicitor-General contends that the power to terminate services conferred by paragraph 4(h) of the circular is independent of clause 10 of the Order, and the same can be, and has been, validly exercised in the present cases.

In considering the validity of these rival contentions, it is necessary to bear in mind the true legal position about the character of the relevant statutory provisions. It is plain that the provisions contained in s. 11(2) of the Act are paramount and would override any contrary provisions contained in the Order or the Regulations. Subject to the provisions of s. 11(2), the provisions of the Order will prevail, because the Order has been issued by the Central Government by virtue of the powers conferred on it by s. 11(2) itself. The provisions of the Order in law partake of the character of the rules framed under s. 48 of the Act. Thus next to the provisions of s. 11(2) of the Act will stand the provisions of the Order. Then we have the Regulations issued by the Corporation under s. 49(1) of the Act. But it must be borne in mind that the power of the Corporation to make Regulations is burdened with the condition that these regulations must not be inconsistent with the Act and the rules framed thereunder, so that if any of the provisions contained in the Regulations made by the Corporation under s. 49 are found to be inconsistent either with s. 11(2) or with the Order made by the Central Government under s. 11(2), they would be invalid. It is in the light of

this legal position that the problem posed before us in the present appeals must be decided.

We have already noticed that as soon as the Field Officers or the Development Officers became the employees of the Corporation on the appointed day under s. 11(1), they initially carried with them their original terms and conditions of service, and this state of affairs continued until the Order was issued on the 30th December, 1957. As we have already seen, the provisions of this Order provide for the terms and conditions of service in matters covered by the Order. In regard to remuneration, the Order did not completely resolve the problem, but it left the determination of the scale of pay and allowances payable to each employee in the light of the Regulations which would be framed by the Corporation in pursuance of the authority conferred on the it by clause 11 of the Order; but in regard to the termination of services of the employees, clause 10 has made a specific provision, and wherever the Corporation wants to terminate the services of any Development Officer, clause 10 has to be complied with. It is true that paragraph 4(h) of the circular purports to say that in cases falling under the last part of the said paragraph, the services of the Field Officers will be terminated. If the said portion of paragraph 4(h) is interpreted to mean that it confers on the Corporation an authority to terminate the services of the Development Officer independently of clause 10 of the Order, it would be inconsistent with the said clause and would, therefore, be invalid. We are, however, satisfied that the said portion of para 4(h) really means that in cases falling under it, the services of the officers concerned would be liable to be terminated, and that means that the termination of the services of the said officers must be effected in the manner prescribed by clause 10 of the Order. That is how paragraph 4(h) and clause 10 can be reasonably reconciled. What we have said about para 4(h) is equally true about paragraph 5 of the circular.

In regard to the fixation of remuneration, however, the position is that clause 5 of the Order fixes the scales of pay and allowances and leaves it to the regulations to lay down the principles in the light of which each individual case should be judged. It was, therefore, perfectly competent to the Corporation to adopt the Circular issued by the Managing Director, and in consequence, lay down the principles which should be followed in fitting individual officers into the scheme prescribed by clause 5 of the Order. But it is necessary to emphasise that the scope and purpose of fitting the officers obviously is to treat the officers as continuing to remain in the category of Development Officers and prescribe their remunerations accordingly. The total amount of remuneration would undoubtedly be determined in the light of the principles prescribed by the circular, but under the guise of fitting in a particular officer in the light of the said principles it would not be open to the Corporation to demote the officer from the grade of Development Officer to a lower grade; that would be beyond the competence of the regulations. All that the Regulations can purport to do is to lay down principles for fixing the actual pay and allowances admissible to the Development Officers. That is the direction contained in clause 11 of the Order and it is within the limits of the said direction that the principles can be validly laid down by the Regulations. After the remuneration is determined in the light of the principles laid down by the Regulations, if any officer is not inclined to accept the said altered remuneration, occasion may arise for the Corporation to exercise its power under s. 11(2) of the Act and pay him compensation as therein contemplated. That, however, is a matter with which we are not concerned in the present appeals. What we are concerned with in the present appeals is the validity of the orders terminating the services of the officers on the ground that they are found to be incompetent. If the officers were found to be incompetent in the light of the provisions of paragraph 4(h) of the circular, their services could no doubt be terminated, but such termination of services must conform to the requirements of clause 10(a) of (b) of the Order. As we have already seen, it is common ground that the impugned orders terminating the services of the respective respondents have not been passed in accordance either with clause 10(a) or 10(b), and so, they must be held to be invalid.

It is true that in the present proceedings the respondents had claimed relief under Art. 311(2) of the Constitution and had in their writ petitions challenged the validity of the Order and the Regulations. That, however, does not dis-entitle the respondents from claiming the same relief on the alternative basis that though the Order and the Regulations may be valid, the impugned orders whereby their services have been terminated are invalid for the reason that they do not comply with clause 10 of the Order. Therefore, we are satisfied that the learned Solicitor-General is not justified in contending that the impugned orders can be sustained under paragraph 4(h) of the Circular which has been adopted by the Regulations as annexure thereto.

There is one more point which has yet to be examined. In regard to the case of Haridas Roy who is the respondent in C.A. No. 917 of 1963, the learned Solicitor-General has contended that the order terminating his services is valid either under para 4(h) of the circular or under s. 11(2) of the Act. Haridas Roy was originally employed by the Hindustan Co-operative Insurance Society Ltd., before the appointed day as an Inspector of Agents. After the Corporation took over the controlled business of the said Insurance Co., he was appointed as a Field Officer under the Order, and the order of his appointment was communicated to him on the 15th February, 1958. It appears that on the 9th August, 1958, he was told that his case had been considered by the Zonal Committee and it had been decided to absorb him in the office as an Assistant on the emoluments mentioned in the order. Haridas Roy declined to accept this assignment and stated that he wanted to continue as a Field Officer as before. Thereupon his services were terminated by an order dated the 18th September, 1958. In this letter, Roy was told that his case had been carefully considered by the Zonal Committee and he was offered ex-gratia to be absorbed on the administrative side as an Assistant; since he refused to accept that assignment, his services were terminated on payment of one month's salary in lieu of notice less deductions, if any. This letter also told Roy that there were no extenuating circumstances in his case and his work was found to be of very poor quality. It would be noticed that the Corporation presumably examined the performance of Roy in the light of the principles laid down by the relevant provisions in the circular and held that his case fell under the last part of the paragraph 4(h) of the said circular. That only means that having regard to his poor performance Roy became eligible to be dealt with under clause 10 of the Order. It was not open to the Corporation to require Roy to accept an assignment in a lower or different category. What the regulations are authorised to do is merely to determine his salary in the category of Development Officers, and so, we do not see how the order terminating his services because he refused to take an assignment as an Assistant can be justified. It would have been open to the Corporation to fix Roy's salary at the minimum in the grade prescribed by clause 5 of the Order and if he had refused to take it, an occasion may have arisen for the operation of s. 11(2) of the Act. Therefore, we are satisfied that the case of Roy cannot be distinguished from the cases of other respondents in the present group of appeals.

The result is, the orders passed by the High Court are confirmed, and the appeals are dismissed with costs. One set hearing fees.

Appeals dismissed.

</html