Life Insurance Corporation of India and Others

Vs

S. S. Srivastava and Others

Civil Appeals Nos. 1076-77 of 1987

(E. S. Venkataramiah, K. N. Singh JJ)

05.05.1987

JUDGMENT

VENKATARAMIAH, J. –

1. The question involved in these appeals by special leave which are filed against the judgment dated August 17, 1985 of the High Court of Allahabad in Civil Miscellaneous Writ No. 6849 of 1984 relates to the constitutional validity of Regulation 19(2) of the Life Insurance Corporation of India (Staff) Regulations, 1960 (hereinafter referred to as 'the (Staff) Regulations, 1960'), as amended to January 21, 1977 by the Life Insurance Corporation of India (hereinafter referred to as 'the Corporation') which provides that an employees belonging to Class I or Class II appointed to the service of the Corporation on or after September 1, 1956 shall retire on completion of 58 years of age but the competent authority may, if it is of the opinion that it is in the interest of the Corporation to do so, direct such employees to retire on completion of 50 years of age and at any time thereafter on giving him three months' notice or salary in lieu thereof.

2. Prior to January, 1955 there were more than 200 insurers carrying of life insurance business in India. As it came to the notice of the government that the Indian life insurers, with a few exceptions, were virtually controlled by few individuals who were utilising the funds of those companies to the detriment of the industry and the policy-holders, the government decided to nationalise the life insurance business. Pursuant to the said decision, the President of India promulgated the Life Insurance (Emergency Provisions) Ordinance, 1956 on January 19, 1956 providing for the vesting of the management of the life insurance business (which was called the controlled business under the Ordinance) which was being carried on by any insurer in India on that day in the Central Government and providing for its management. On the passing of the said Ordinance the management of the controlled business of all the insurers in India thus vested in the Central Government and pending the appointment of the custodians for the controlled business of any insurer the person in charges of the management of such business immediately before the passing of the Ordinance was required to be in charge of the management of the business for and on behalf of the Central Government. The Ordinance contained detailed provisions for the carrying on of the life insurance business by the government for the time being. The Ordinance was replaced by the Life Insurance (Emergency Provisions) Act, 1956 which was published on March 21, 1956 (Act 31 of 1956) (hereinafter referred to as 'the Act') which was published in the Gazette on June 18, 1956. The Act, however, came into force on July 1, 1956. The Act provides for the establishment and incorporation of the Corporation. The Corporation was accordingly established on September 1, 1956. Under the Act the expression 'appointed day' is defined as the date on which the Corporation is established. The appointed day for the purposes of the Act is, therefore, September 1, 1956. By virtue of Section 7 of the Act on the appointed day all the assets and liabilities appertaining to the

controlled business of all insurers, the management of which had been taken over earlier by the Central Government, stood transferred to and vested in the Corporation. When the Corporation thus came into existence it had no employees of its own to carry on the vast business of the large number of insurers which had been taken over by it. It, therefore, became necessary to transfer the services of the existing employees of the insurers to the Corporation because without the services of those employees it was almost impossible for the Corporation to run the life insurance business in India which involved management of the various offices situated in different parts of India, servicing of lakhs of insurance policies, the administration of the assets taken over from the insurers and several other activities connected with the life insurance business. The nature of the work of the Corporation was such that it required the services of the employees with sufficient experience and expertise in running the life insurance business. In order to meet the above need Section 11 of the Act came to be enacted. Section 11 of the Act originally stood as follows :

> 11. Transfer of service of existing employees of insurers to the Corporation. - (1) Every wholetime 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 :
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> 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.
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> (2) Notwithstanding anything contained in sub-section (1) or in any contract of service, the Central Government may, for the purpose of rationalising the pay scales of employees of insurers whose controlled business has been transferred to and vested in it or for the purpose of reducing the remuneration payable to employees in cases where in the interest of the Corporation and its policy-holders a reduction is called for, alter the terms of service of the employees as to their remuneration in such manner as it thinks fit; and if the alteration is not acceptable to any employee the Corporation may terminate his employment on giving him compensation equivalent to three months' remuneration unless the contract of service with such employee provides for a shorter notice of termination.
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> 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.
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> (3) If any question arises as to whether any 'person was a wholetime 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 (14 of 1947), or in any other law for the time being in force, the transfer of the services of any employees of an insurer to the Corporation shall not entitle any such employee to any compensation under the Act or other law, and no such claim shall be entertained by any court, tribunal or other authority.

3. Sub-section (1) of Section 11 of the Act provided that every wholetime employee of an insurer whose controlled business had been transferred to and vested in the Corporation and who was employed by the insurer wholly or mainly in connection with the controlled business immediately before the appointed day, i.e., September 1, 1956, would on and from the appointed day become an employee of the Corporation, and would 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 the Act had not been passed, and would continue to do so unless and until this employment in the Corporation was terminated and until his remuneration, terms and conditions were duly altered by the Corporation. The proviso to that sub-section provided that nothing contained in sub-section (1) of Section 11 of the Act would apply to any such employee who had by notice in writing given to the Central Government prior to September 1, 1956 intimated his intention of not becoming an employee of the Corporation. The wholetime employees of the erstwhile insures whose services were thus transferred to the Corporation are hereinafter referred to as 'the transferred employees' of the Corporation. As mentioned earlier, there were more than 200 insurers whose controlled business had been taken over by the Corporation and we are informed that there were about 27,000 wholetime employees working in them. The conditions of service of these transferred employees of the Corporation whose services were transferred to the Corporation under Section 11(1) of the Act were not uniform. It was naturally difficult to continue after the establishment of the Corporation in the cases of all the transferred employees, the conditions of service enjoyed by them when they were in the employment of the former insurers. The conditions governing the retirement of those officials with which we are concerned in these appeals were also diverse and different. In some cases the age of retirement had been fixed at 55 years, in some at 58 years and in some others at 60 years. In many cases the insurers had permitted their employees to continue in their service even beyond 60 years depending upon their efficiency and physical capacity. The conditions of service of employees and in particular the terms of remuneration prevalent in some of the former insurance organisations were also disadvantageous to the policy-holders. It, therefore, became necessary to bring about uniformity in the conditions of service of the transferred employees. Parliament, therefore, enacted sub-section (2) of Section 11 of the Act which provided that notwithstanding anything contained in sub-section (1) of Section 11 or in any contract of service, the Central Government might for the purposes of rationalising the pay scales of employees of insurers whose controlled business had been transferred to and vested in it or for the purposes of reducing the remuneration payable to those employees in cases where in the interest of the Corporation and its policy holders a reduction was called for, alter the terms of service of the employees as to their remuneration in such manner as it thought fit and if the alteration was not acceptable to any employee the Corporation might terminate his employment on giving him compensation equivalent to three months' remuneration unless the contract of service with such employee provided for a shorter notice of termination. Doubts arose as regards the meaning of sub-section (2) of Section 11 of the Act. In Christopher Pimenta v. LIC (AIR 1958 Bom 451 : 60 Bom LR 318) the High Court of Bombay opined that under Section 11(2) of the Act the Central Government could alter the terms and conditions of service of the employees only as to the remuneration and that the said sub-section had no reference to the other terms and conditions of the service. The above decision of the Bombay

High Court was delivered on April 16, 1957. It is stated that there were cases pending in other courts also questioning the scope and ambit of sub-section (2) of Section 11 of the Act as it stood originally. Hence in order to remove all doubts the President of India promulgated an Ordinance (which was replaced by Act 17 of 1957) substituting a new sub-section in the place of the original sub-section (2) of Section 11 of the Act making it more comprehensive and thus enabling the Central Government to alter suitably all conditions of service of the transferred employees. The new sub-section (2) of Section 11 of the Act was further modified by Act 36 of 1957. Thereafter sub-section (2) of Section 11 of the Act read as follows :

> (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 contact of service with such employee provides for a shorter notice of termination.
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> 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.

4. Section 49 (1) of the Act conferred powers on the Corporation to make with the previous approval of the Central Government regulations not inconsistent with the Act and rules made thereunder. It provided for making regulations to provide for all matters for which provision was expedient for the purposes of giving effect to the provisions of the Act. Clause (b) of sub-section (2) of Section 49 of the Act in particular conferred power on the Corporation to make regulations as regards the method of recruitment of employees and agents. It was felt that clause (b) of Section 49(2) of the Act was not in terms applicable to the transferred employees who became the employees of the Corporation under sub-section (1) of Section 11 of the Act but only referred to the employees and agents of the Corporation who were employed after the Corporation was established, that is, after September 1, 1956. To remove the above doubt Section 49 of the Act was amended by Act 17 of 1957 by introducing clause (bb) in sub-section (2) of Section 49 of the Act which expressly conferred power on the Corporation to make regulations with the previous approval of the Central Government as regards 'the terms and conditions of service of persons who have b bring in the idea whether the process or processes concerned are such as to change the nature of the 'grey fabric'. This leads to the question whether 'calendering' and 'shearing', though by themselves are finishing processes, render the 'grey' fabric cease to be so.

10. Sri Sorabjee submitted that the process of calendering is nothing more than mere pressing of the 'grey fabric' by running it through plain rollers to impart a better finish, which is a mere temporary

finish. Sri Sorabjee referred to some of the notifications issued under Section 8(1) of the Act which say that calendering would not be treated as "processing". Learned counsel contended that having regard to the very nature, the calendering does not bring about any change in the quality of the goods.

11. In Siddeshwari Cotton Mills case ((1984) 18 ELT 297), the Tribunal has referred to certain technical and scientific literature on the process of 'calendering'. Sri Sorabjee referred to some of them. In Modern Textiles (by D authority may at its discretion extent the service every year up to 60 years of age :

> Provided, however, that in respect of some of the employees of insurers who are allowed to continue in service beyond age 60 because of the terms and conditions of employment having not been favourable in the past, the Executive Committee may at its discretion extent their service every year up to age 65 :
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> Provided further that during the three years, beginning from September 1, 1956, the Executive Committee may, at its discretion, extend the service of a Class I employee, who has completed sixty years of age for such period as may be specified but not exceeding one year at a time if such extension is considered necessary in the interest of the Corporation.
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> Explanation. - Notwithstanding anything contained in this regulation, where an employee has privilege leave earned but not availed of as on the date of retirement as prescribed in the above regulation he may be permitted to avail of the leave and in that case the employee will be deemed to retire from service at the expiry of the leave.

5. The above regulation fixed the age of retirement of an employee at 55 years while empowering the authority to extent the service of an employee, as its discretion, every year up to 60 years of age. The first proviso to Regulation 21 of the (Staff) Regulations, 1956, however, authorised the Corporation to allow some of the employees of insurers who were allowed to continue in service beyond the age of 60 years for the reasons mentioned therein. The above regulation thus made a distinction between an employees who entered the service of the Corporation after it was established, i.e., after September 1, 1956 and the transferred employees insofar as the age of retirement was concerned.

6. Pursuant to the power conferred on it under sub-section (2) of Section 11 of the Act the Central Government issued an order on June 1, 1957 called the Life Insurance Corporation of India (Alternation of Remuneration and other Terms and Conditions of Service of Employees) Order, 1957 which came into force retrospectively from September 1, 1956. This order is called the 'standardisation order'. This Order applied to all transferred employees who had become employees of the Corporation under Section 11(1) of the Act and who were in supervisory, clerical and subordinate grades (now classified as Class III and Class IV employees) of the erstwhile insurers on August 31, 1956. Clause 13 of the above Order, which related to the age of superannuation read as follows :

> 13. Retirement. - The normal age of retirement shall be 60. But the Corporation may require any employee who has attained the age of 55 to retire if his efficiency is found to have been impaired.

7. Clause 13 of the above Order, therefore, modified Regulation 21 of the (Staff) Regulations, 1956 to the extent indicated therein with effect from the commencement of the Corporation. After the promulgation of the Order the transferred employees to whom it applied were entitled to continue in the service of the Corporation till they attained the age of 60 years subject to the Corporation exercising its powers to retire a transferred employee on his attaining the age of 55 years of his efficiency was found to have been impaired. In the case of the other employees who joined service subsequent to September 1, 1956 Regulation 21 of the (Staff) Regulation, 1956, which prescribed the age of retirement at 55 years subject to the appointing authority at its discretion extending the age of retirement to 60 years as provided therein, continued to apply. This Order applied to the members of the staff of the Corporation belonging to Class III and Class IV categories. As regards the transferred officers belonging to the Class II category, namely, the Field Officers, a standardisation order was made under sub-section (2) of Section 11 of the Act on December 30, 1957. Clause 6 of that order originally read as follows :

> 6. Leave and retirement. - In the matter of leave and retirement, Field Officers shall be governed by the same regulations as are applicable to Class I officers of the Corporation.

8. The above Clause 6 was substituted by a new clause on January 25, 1962 which read as follows :

> 6. Leave and retirement. - In the matter of leave and retirement, Development Officers shall be governed by the Life Insurance Corporation of India (Staff) Regulations, 1960, as amended from time to time.

9. It may be noted that the Field Officers referred to in the former Clause 6 had been redesignated as the Development Officers before it was substituted by the later Clause 6 of the standardisation order. Insofar as the transferred officers belonging to Class I were concerned, the question of determination of their age of superannuation was taken up for consideration by the Services and Budget Committee of the Corporation on November 20, 1959. Para 9 of the office note circulated amongst the members of that Committee gave a true picture of the conditions prevailing then. It read thus :

> 9. As regards retirement, the government has mentioned that the Department of Expenditure has objected to raising the date of superannuation to 58 years of age on the ground that other statutory corporations are also demanding the same benefit on the analogy of the Life Insurance Corporation's proposal. Standardisation Order provides that an employees shall retire at 60 years of age, put the competent authority may require an employee to retire at any time after 55 years of age if his efficiency is found to have been impaired. In the amended Regulations approved by the Board, this provision of the Standardisation Order was incorporated as far as employees in Class III and IV are concerned but in the case of transferred officers and Field Officers, the retirement age was fixed at 55 extensible to 58 with a further proviso that in special circumstances only the competent authority may extend the service beyond age 58 and up to 61 years of age. The Board has also decided that administratively we shall grant extension up to 60 liberally till the end of 1963. Most of the insurers permitted their officers to continue in service up to 60 years of age and even beyond, depending upon their efficiency. There is no reason why where should be distinction between officers and staff in this matter as both of them had similar privileges with regard to retirement in the past. There is thus a strong case for

> extending the provision of the Standardisation Order regarding retirement to the transferred officers also. As regards new recruits, it was though that there was no justification to bring down the retirement age from 60 to 55 all of a sudden nor was it considered necessary to maintain any distinction between officers and staff. All the employees have often represented that the age of retirement should be raised to 60. A compromise was, therefore, struck by fixing the age at 58. In the light of the above it is suggested that the provisions of the Standardisation Order may be extended to transferred officers and the retirement age may be retained at 58 for persons recruited on or after January 1, 1959. It may be added that this would mean a modification of the earlier decision of the Board in this matter.

10. After the matter was duly considered by the Services and the Budget Committee and by the Corporation regulations were framed under clause (b) and (bb) of Section 49(2) of the Act prescribing the ages of retirement of the employees of the Corporation belonging to different categories with the previous approval of the Central Government and were incorporated in the (staff) Regulations, 1960 made by the Corporation which came into effect on July 1, 1960. Regulation 19 of the (Staff) Regulations, 1960 dealt with the subject of superannuation and retirement of the employees of the Corporation. It read thus :

> 19(1) Superannuation and Retirement. - A transferred employee shall retire on completion of age 60; but the appointing authority may direct such employee to retire on completion of 55 years of age or at any time thereafter, if his efficiency is found to have been impaired.
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> (2) An employee appointed to the service of the Corporation on or after September 1, 1956 shall retire on completion of 58 years of age; but the appointing authority may direct such employee to retire on completion of 55 years of age or at any time thereafter, if his efficiency is found to have been impaired.

11. It is seen from the above regulation that the cases of all transferred employees were dealt with by sub-regulation (1) of Regulation 19 and the cases of employees appointed to the service of the Corporation that year after September 1, 1956 were dealt with by sub-regulation (2) Corporation that year after September 1, 1956 were dealt with by sub-regulation (2) of Regulation 19. All the transferred employees were entitled to remain in service till they completed 60 years of age but the appointing authority was empowered to retire any such transferred employee on completion of 55 years of age or at any time thereafter if his efficiency was found to have been impaired. All employees appointed to the service of the Corporation on or after September 1, 1956 were required to retire on completion of 58 years of age but the appointing authority was empowered to retire any such employee on completion of 55 years of age or at any time thereafter if his efficiency was found to have been impaired. This regulation was made in supersession of all other earlier regulations. In the case of the transferred employees the regulation was in conformity with the standardisation order passed in respect of Class III and Class IV transferred employees in whose case the age of retirement was fixed at 60 years. The result was that the regulation made clear and distinct classification of all the employees of the Corporation belonging to all classes into two groups - transferred employees and the employees appointed after September 1, 1956, for purposes of the age of retirement having regard to the historical reasons. It would appear that an industrial dispute arose between the Class III and Class IV employees who entered the service of the Corporation on or after September 1, 1956 and the Corporation and one of the points of dispute related to the age or retirement. These employees demanded that their age of retirement should also be fixed at 60 years

as in the case of Class III and Class IV employees belonging to the category of transferred employees. The dispute ultimately ended in a settlement which was incorporated in the Memorandum of Settlement arrived at under Section 2 (p) and Section 18(1) of the Industrial Disputes Act, 1947 and Rule 58 of the Industrial (Central) Disputes Rules, 1957 dated January 29, 1965. The relevant part of the settlement arrived at between the parties to the said industrial dispute as regards the age of retirement of Class III and Class IV employees who entered the service of the Corporation on or after September 1, 1956 read as follows :

> 1. Retirement age for new employees. - There will be no distinction between Class III and Class IV 'transferred employees' and Class III and Class IV employees who entered the service of the Corporation on or after September 1, 1956 in regard to retirement age which shall be 60.

12. After the above settlement was arrived at Regulation 19 of the (Staff) Regulations, 1960, which had been brought into force with effect from July 1, 1960, was suitably amended to bring it in conformity with the settlement. The relevant part of the amended Regulation 19 which was notified on June 19, 1965 read thus :

> 19(1) An employee belonging to Class III or Class IV and a transferred employee belonging to Class I or Class II shall retire on completion of age 60; but the appointing authority may direct such employee to retire on completion of 55 years of age or at any time thereafter, if his efficiency is found to have been impaired.
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> (2) An employee belonging to Class I or Class II appointed to the service of the Corporation on or after September 1, 1956 shall retire on completion of 58 years of age, but the appointing authority may direct such employee to retire on completion of 55 years of age or at any time thereafter, if his efficiency is found to have been impaired.
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> (2-A). Notwithstanding what is stated in sub-regulations (1) and (2) above, an employee may be permitted to retire at any time after he has completed age 55.

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13. On account of the settlement arrived at between Class III and Class IV employees, who were appointed subsequent to September 1, 1956 and the Corporation, which was followed up by the amendment of the (Staff) Regulations with effect from June 19, 1965, the employees of the Corporation were divided both longitudinally and latitudinally insofar as the age of superannuation was concerned. The longitudinal division of the employees was as follows. All the transferred employees belonging to Class I and Class II became entitled to continue in service till they attained the age of 60 years subject of course to the power of the Corporation to retire any of them prematurely on completion of 55 years of age if his efficiency was found to have been impaired and all the Class I and Class II officers appointed to the service of the Corporation on or after September 1, 1956 had to retire on completion of 58 years of age subject again to the power of the Corporation to retire any such employees on completion of 55 years of age or at any time thereafter if his efficiency was found to have been impaired. The employees of the Corporation were divided latitudinally into two groups. All the employees belonging to Class III and Class IV irrespective of the fact whether they were transferred employees or employees appointed after September 1, 1956 were entitled to continue in service till 60 years of age, but the employees belonging to Class I and

Class II, who were appointed to the service of the Corporation on or after September 1, 1956 had to retire on the completion of 58 years of age subject to the usual clause relating to premature retirement. Sub-regulation (2) or Regulation 19 which affected the employees belonging to Class I and II appointed to the service of the Corporation on or after September 1, 1956 was substituted by a new sub-regulation which was notified on September 3, 1966. This new sub-regulation (2) of Regulation 19 read as follows :

> (2) An employee belonging to the Class I or Class II appointed to the service of the Corporation on or after September 1, 1956 shall retire on completion of 58 years of age, but the appointing authority may at its discretion, extent his service for one year at a time up to 60 years of age. The appointing authority may, however, direct an employee to entire on completion of 55 years of age or at any time thereafter if his efficiency is found to have been impaired.

14. The modification made by the new sub-regulation (2) of Regulation 19 empowered the appointing authority to extent as its discretion the service of any employee of the Corporation belonging to the Class I or Class II categories appointed to the service of the Corporation on or after September 1, 1956 for one year at a time up to 60 years of age. Since the Corporation found that the discretion conferred on the appointing authority to extend the services of Class I or Class II officers beyond 58 years of age at its discretion was not being exercised satisfactorily but very often abused, sub-regulation (2) was again amended on January 21, 1977 withdrawing the power to extend the service of employees belonging to Class I and Class II appointed to the service of the Corporation on or after September 1, 1956 beyond 58 yeas of age. It also provided that in the interest of the Corporation, the Corporation could retire an employee after completion of 50 years of age. The relevant part of Regulation 19 amended on January 21, 1977 reads thus :

> 19(1) An employees belonging to Class III or Class IV and a transferred employee belonging to Class I or Class II shall retire on completion of age 60; but the competent authority may, if it is of the opinion that it is in the interest of the Corporation to do so, direct such employee to retire on completion of 55 years of age or at any time thereafter, on giving him three months' notice or salary in lieu thereof.
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> (2) An employee belonging to Class I or Class II appointed to the service of the Corporation on or after September 1, 1956 shall retire on completion of 58 years of age, but the competent authority may, if it is of the opinion that it is in the interest of the Corporation to do so, direct such employee to retire on completion of 50 years of age or at any time thereafter on giving him three months' notice or salary in lieu thereof.

15. Respondent 1, S. S. Srivastava entered the service of the Corporation as a Class III employee on March 22, 1957 on which date he was appointed as an Assistant in the Corporation. From the said Class III post he was promoted to the Class I post (since there was no necessity to pass through a Class II post before entering a Class I post) on October 8, 1963 and was appointed as Assistant Branch Manager (Admn.). From the post of Assistant Administrative Officer he was promoted to the post of Administrative Officer in June 1971 and was further promoted as Assistant Divisional Manager on July 18, 1978. Since he was born in the month of June 1926, notice was issued in February, 1984 to respondent 1 of his retirement which was due on June 30, 1984 on his completing

the age of 58 years. Before the date of his retirement, he instituted a writ petition out of which these appeals arise in Civil Miscellaneous Writ No. 6849 of 1984 on the file of the High Court of Allahabad questioning the validity of Regulation 19(2) of the (Staff) Regulations, 1960 as it stood then and prying for the issue of a writ in the nature of mandamus to the Corporation not to retire him before he completed the age of 60 years. The High Court issued an interim order of stay of his retirement on May 22, 1984. Hence, he was not retired on June 30, 1984 as originally notified and allowed to continue in service. The writ petition was allowed striking down Regulation 19(2) as being violative of Articles 14 and 16 of the Constitution of India and the Corporation was directed not to retire respondent 1, before he attained the age of 60 years. By virtue of the judgment of the High Court, respondent 1, continued in the service of the Corporation till he completed 60 years of age. He was retired from service on June 30, 1986 during the pendency of these appeals.

16. In the writ petition filed by respondent 1 it was contended that there was no justification to prescribe two different ages of retirement one for the transferred employees belonging to Class I and Class II categories and the other for the employees who joined the service of the Corporation after September 1, 1956 and who also belonged to Class I and Class II categories. It was also contended that whatever may be the position in respect of persons who were appointed directly to any post belonging to Class I or Class II category after September 1, 1956, as regards those who joined the service of the Corporation on being appointed to a Class III post after September 1, 1956 there could not be any reduction of the age of retirement from 60 years to 58 years on their being promoted to a Class I post or Class II post). In other words the contention of respondent I before the High Court was that since he had the right to continue in service if he had remained in Class III only till he attained the age of 60 years as a Class III employee by virtue of the settlement and the amendment of the Regulation 19 in the year 1965, the age of retirement in his case could not be reduced to 58 years only because he had been promoted to a Class I post. The writ petition was contested by the Corporation and the Union of India. It was urged on behalf of the Corporation and the Union of India that the transferred employees and the employees who joined the service after September 1, 1956 belonged to two distinct and separate classes which had been treated differently throughout for valid reasons. It was pleaded by them that on the establishment of the Corporation under the Act it became necessary to continue the services of the employees of the erstwhile insurers whose life insurance business was taken over by the Corporation to run the business of the Corporation because the Corporation had no employees of its own in the month of September 1956 when it was established. Since as regards the age of retirement there was no uniformity in the establishment in which the transferred employees were working prior to the nationalisation of the life insurance business and as in some cases the age of retirement had been fixed at 55 years, in some other cases it was 58 years, in few other cases at 60 years and in many cases there was no age of retirement and the employees could continue as long as they were found to be physically and mentally fit, it became necessary to fix the age of retirement of the transferred employees on a fair, equitable and just basis. The Central Government and the Corporation felt that 60 years of age could be a proper age of retirement in the circumstances in respect of the transferred employees and that was the reason why by Regulation 19 and the Standardisation Order issued earlier in the case of certain classes of transferred employees under Section 11(2) of the Act the retirement age was fixed at 60 years and this was done with a view to retaining the services of the experienced employees of the erstwhile insurers. It was pleaded on behalf of the Corporation and the Union of India that in the circumstances the classification of the employees into two categories, namely, transferred employees and others who joined the service of the Corporation on or after September 1, 1956 for the purposes of the age of superannuation was a valid classification and Articles 14 and 16 of the Constitution of India had not been violated. It was further pleaded that the discrimination made

between the employees belonging to Class I and Class II on the one hand and the employees belonging to Class III and Class IV on the other in the matter of the age of superannuation was not invalid since they belonged to two distinct categories of employees who were governed by different conditions of service as regards pay, perquisites, allowances, administrative powers etc. After hearing the arguments of both the sides the learned judges of the High Court allowed the writ petition. The High Court did not find any unconstitutionality in a rule or regulation providing the age of retirement at 60 years of employees who had been absorbed the age the service of the erstwhile insurers and to that extent in observed that one could say that the grouping being reasonable the court might not travel into the domain of legislative policy. It, however, found that when once a transferred employee belonging to Class III and an employee appointed after September 1, 1956 by the Corporation to a Class III post are promoted to Class I the distinction of transferred employee and direct appointee could not be maintained as on promotion they became persons belonging to the same category of employees enjoying the same conditions of service. Hence the age of retirement should be the same in the case of both such promotees. It accordingly held that respondent 1 was entitled to continue till he attained the age of 60 years as other Class I employees belonging to the category of transferred employees. Aggrieved by the judgment of the High Court the Corporation and the Union of India have filed these appeals by special leave.

17. It should be stated at the outset that some of the questions raised before us are already covered by pronouncements made by this Court. The object of enacting Section 11 of the Act is dealt with in detail by this Court in L. I. C. v. D. J. Bahadur ((1981) 1 SCR 1083 : (1981) 1 SCC 315 : 1981 SCC 315 : 1981 SCC (L&S) 111 : AIR 1980 SC 2181) which unfortunately was not brought to the notice of the High Court. Krishna Iyer, J., at pages 1098-99 has observed in the course of the said decision thus : [SCC p. 328, SCC (L&S) pp. 123-24, para 9]

> The Corporation, to begin with, had to take over the staff of the private insurers lest they should be thrown out of employment, on nationalisation. These private companies had no homogeneous policy regarding conditions of service for their personnel, but when these heterogeneous crowds under the same management (the Corporation) divergent emoluments and other terms of service could not survive and broad uniformity became a necessity. Thus the statutory transfer of service from former employers and standardization of scales of remuneration and other conditions of employment had to be and were taken care of by 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 ID Act will continue to apply to the Corporation employees. The office of Section 11 of the LIC Act was to provide for a smooth takeover 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 standardization 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.

18. Pathak, J., (as he then was) in his judgment in the same case observed at pages 1134 to 1136 thus : [SCC pp. 356-58, SCC (L&S) pp. 149-80, paras 67-69]

> The first question is whether the new Clause 9 of the Standardisation Order succeeds in defeating the claim of the workmen. To determine that, Section 11 of the Corporation Act must be examined. Sub-section (1) guarantees to the transferred employee the same tenure, at the same remuneration and upon the same terms and conditions on his transfer to the Corporation as he enjoyed on the appointed day under the insurer, and he is entitled to them until they are duly altered by the Corporation or his employment in the Corporation is terminated. The sub-section envisages alteration by the Corporation.

Sub-section (2) of Section 11, by its first limb, confers power on the Central Government to alter the scales of remuneration and other terms and conditions of service applicable to transferred employees. Predictably, when the transferred employees of different insurers were brought together in common employment under the Corporation they would have been enjoying different insurers were brought together in common employment under the Corporation they would have been enjoying different scales of remuneration and other terms and conditions of service. The power under this part of sub-section (2) is intended for the purpose of securing uniformity among them. 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. There is provision for the transfer of the assets and other like funds, of the services of existing employees of insurers to the Corporation and also of the service of existing employees of chief agents of the insures to the Corporation, and finally for the payment of compensation to the insurers for the transfer of the business to the Corporation. 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 sub-section 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 interest 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. It is a situation to be distinguished from what happens when the Corporation, launched on its normal course, voluntarily assumes, in the course of its working, obligations in respect of its employees or becomes subject to such obligations by reason of subsequent industrial adjudication. Like any other employer, the Corporation is then open to the normal play of industrial relations in contemporary or future time. That the two provisions of sub-section (2) are linked with the process of transfer and integration is further indicated by the circumstance that the power thereunder is vested in the Central Government. The scheme of the sections in Chapter IV indicates generally that Parliament has appointed the Central Government as the effective and direct instrumentality for bringing about the transfer and integration in the different sectors of that process.

There is no danger of an order made by the Central Government under the second limb of sub-section (2) in respect of transferred employees being struck down on the ground that it violates the equality provisions of Part III of the Constitution because similar action has not been taken in respect of newly recruited employees. So long as such order is confined to what is necessitated by the process of transfer and integration, the transferred employees constitute a reasonably defined class in themselves and form no common basis with newly recruited employees.

19. Pathak, J., also observed at page 1136 thus : [SCC pp. 358-59, SCC (L&S) p. 151, para 71]

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

20. We gave given extracts from the above decisions which are fairly long since they relate to the identical provisions of law and also cover a large part of the arguments urged before us.

21. Having regard to the different conditions of service that were prevailing in the various establishments whose business was taken over by the Corporation it can hardly be disputed that the fixation of age of superannuation is one of the essential parts of the process of transfer and integration to which sub-section (2) of Section 11 of the Act is applicable. The fixation of 60 years as the age of superannuation in the case of transferred employees cannot be considered to be unreasonable in view of the history of this case. The observations made by Pathak, J. in the course of his judgment that (SCC p. 358 para 69) "there is no danger of an order made by the Central Government under the second limb of sub-section (2) in respect of transferred employees being

struck down on the ground that it violates the equality provisions of Part III of the Constitution because similar action has not been taken in respect of newly recruited employees" is significant. A discrimination made by a State between the employees who are directly recruited to the service of the State and the employees whose services are taken over by the State on the taking over of the institutions where they were working has been held to be not unconstitutional by this Court in Ram Lal Wadhwa v. State of Haryana ((1973) 1 SCR 608 : (1972) 2 SCC 275 : AIR 1972 SC 1982). The facts of that case were these. There were some schools run by municipal boards and district boards in the then State of Punjab which were taken over by the Punjab Government with effect from October 1, 1957. The teachers then employed in those schools, thus became State employees. Those teachers called 'provincialised' teachers were to be given the same grades of pay and other allowances as were given to their counterparts in government employment. The teachers in government employment were governed by the Punjab Educational Service Class III School Cadra Rules, 1955. On February 13, 1961, the Punjab Government promulgated under the proviso to Article 309 of the Constitution, the Punjab Educational Service (Provincialised Cadre) Class III Rules, giving them retrospective effect from October 1, 1957. By these Rules the provincialised teachers were treated as falling under a cadre separate and distinct from teachers in the State cadre governed by the 1955 Rules. The 'provincialised' cadre was to be a diminishing cadre to become extinct in course of time. There was to be no further recruitment to that cadre and all vacancies arising in that cadre were to be replenished by direct recruitment to the State cadre. The transfer of such posts to the State cadre was to be done by splitting up such vacant posts into blocks of 7 and 6 by rotation. Consequently, the selection grade of 15 per cent in the State cadre progressively increased in strength which was determined by the total cadre strength while the selection grade in the provincialised cadre progressively decreased. Thus those recruited to the State cadre had a progressively larger chance of getting into the in the selection grade. In State of Punjab v. Joginder Singh (1963 Supp 2 SCR 169 : AIR 1963 SC 913), this Court upheld the validity of the 1961 Rules repelling challenge under Articles 14 and 16 of the Constitution. In the view of the majority in that case the two cadres started as independent services, they were never integrated into one service and, therefore, the dissimilarity of the treatment by the Rules was not a denial of equal opportunity. But, the Punjab Government never implemented the Rules at any time. On the reorganisation of the erstwhile Punjab State into Punjab and Haryana on November 1, 1966, the Haryana Government put the 1961 Rules into operation. The petitioners in the above case, i.e., Ram Lal Wadhwa v. State of Haryana ((1973) 1 SCR 608 : (1972) 2 SCC 275 : AIR 1972 SC 1982) appointed in the local bodies schools before 'provincialisation', challenged the validity of the 1961 Rules. Their complaint was that the Rules created, without any valid justification, two cadres, the State cadre and the provincialised cadre, the former including not only the government school teachers but also those recruited after October 1, 1957 and posted in the provincialised schools; that by reason of having two cadres and providing for both a uniform 15 per cent for selection grade posts, coupled with making the provincialised cadre a diminishing one, the result had been that teachers deemed to have appointed to the State cadre with effect from October 1, 1957 and even those recruitment thereafter had been promoted to the selection grade, while those in the provincialised cadre, though senior in service and performed identical duties and had identical scales of pay, remained in the ordinary grade. According to the petitioners in that case these Rules and their implementation contravened Articles 14 and 16 of the Constitution. The petitioners in that petition contended that the earlier decision of this Court in State of Punjab v. Joginder Singh (AIR 1958 Bom 451 : 60 Bom LR 318) required reconsideration. In the course of its decision this Court rejecting the contention of the petitioners observed thus at pages 635-36 : (SCC pp. 292-93, para 36)

> The principles on which discrimination and breach of Articles 14 and 16 can be said

> to result have been by now so well settled that we do not think it necessary to repeat them here once again. As already seen, ever since 1937 and even before, the two categories of teachers have always remained distinct, governed by different sets of rules, recruited by different authorities and having, otherwise than in the matters of pay scales and qualifications, different conditions of service. This position remained as late as February 13, 1961. On that day whereas the State cadre teachers were governed by 1955 Rules, rules had yet to be framed for the provincialised teachers. The two cadres cadres thus being separate Government was not bound to bring about an integrated cadre especially in view of its decision of making the provincialised cadre a diminishing one and bringing about ultimately through that principle one cadre only in the field in a phased manner. If through historical reasons the teachers had remained in two separate categories, the classification of the provincialised teachers into a separate cadre could not be said to infringe Article 14 of Article 16. It was also not incumbent on the government to frame the 1961 Rules uniformity applicable to both the categories of teachers, firstly, because a rule-framing authority need not legislate for all the categories and can select for which category to legislate (see Sakhawat Ali v. State of Orissa ((1955) 1 SCR 1004 : AIR 1955 SC 166), Madhubhai Amathalal Gandhi v. Union of India ((1961) 1 SCR 191 : AIR 1961 SC 21 : (1960) 30 Com Cas 667) and Vivian Joseph Ferreira v. Municipal Corporation of Greater Bombay ((1972) 1 SCC 70) and secondly, because it had already come to a decision of gradually diminishing the provincialised cadre so that ultimately only that state cadre would remain in the service. That was one way of solving the indicate difficulty of inter se seniority. There can be no doubt that if there are two categories of employees, it is within government's power to recruit in one and not recruit in the other. There is no right in a government employee to compel it to make fresh appointment in the cadre to which the belongs. It cannot also be disputed that government had the power to make rules with retrospective effect, and therefore, could provide therein that appointments made between October 1, 1957 and February 13, 1961, shall be treated as appointments in the State cadre. That had to be done for the simple reason that the provincialised cadre was already frozen even before October 1, 1957 and Government had decided not to make fresh appointments in that cadre since that cadre was to be a diminishing one.

22. It has to be observed in the case before us also that the transferred employees belong to a diminishing cadre. When the Corporation was established they were about 27,000 in number and we are informed today that there are only about 22 per cent of those employees in service. Already 30 years have elapsed from the date of the establishment of the Corporation. All the transferred employees who have already retired have retired only after completing 60 years. The remaining transferred employees who are directly recruited by the Corporation who are about 54,000 in number would continue to remain in its service. The observation made by this Court in Ram Lal Wadhwa v. State of Haryana (1973) 1 SCR 608 : (1972) 2 SCC 275 : AIR 1972 SC 1982) clearly applies to the case before us also.

23. At this stage we should refer to another aspect of the case presented before us which relates to 16 persons who were appointed as the employees of the Corporation by virtue of an order dated March 15, 1966. There was a department in existence in the year 1963 called Department of Insurance. The government and the Corporation felt that the services of 16 persons who were working in the Department of Insurance were required by the Corporation. Accordingly, the President of India agreed to release 16 persons from the service of the Government of India to

enable the Corporation to appoint them in its service by the order of the Central Government dated February 25, 1964. The resignation of those 16 persons from the service of the Government of India was accepted on March 15, 1966 and from that date those persons became the employees of the Corporation. Out of those 16, 13 have already retired from service on attaining the age of 60 years. Only three of them are now in the service of the Corporation. One of them is no longer an employee of the Corporation since he is holding the post of the Chairman of the Corporation. The second of them is due to retire within 2/3 months and only one of them would continue in the service of the Corporation for about a period of two years more. In the case of those 16 people the Corporation passed a separate order fixing their age of retirement as 60 years having regard to the negotiations which had taken place between the Corporation and the government before the taking over of their services by the Corporation. They again belong to a different category altogether and the fixation of the age of retirement in their case at 60 years cannot be challenged by those who were directly recruited by the Corporation after September 1, 1956 as there is no similarity between them and the said 16 officers.

24. The next question for consideration is whether the fixation of 58 years as the age of superannuation in the case of the employees who entered the service after September 1, 1956 is unreasonable. While dealing with this question, the court can take judicial notice of the different ages of retirement prevailing in the several and State services 58 years of age is considered to be a reasonable age at which officers can be directed to retire from their service. So, the determination of 58 years as the age of superannuation by itself cannot be considered to be arbitrary.

25. We do not also find much substance in the contention of respondent 1 that there cannot be any discrimination as regards the age of retirement between the employees belonging to Class I and Class II on the one hand and Class III and Class IV categories amongst the transferred employees were given the benefit of retirement at the age of 60 years but the employees belonging to Class III and Class IV categories recruited after September 1, 1956 were required to retire on the completion of 58 years of age. In the settlement which was arrived at between the management and the Class III and Class IV employees recruited after September 1, 1956 it was agreed that there should be no discrimination as regards the age of retirement between the employees belonging to Class III and Class IV categories amongst the transferred employees and the Class III and Class IV employees recruited after September 1, 1956. It was pursuant to the said settlement that Regulation 19 was amended with effect from June 19, 1965. Having regard to the lower emoluments and other benefits which the employees belonging to Class III and Class IV are entitled to get from the Corporation and the higher emoluments and other benefits to which officers belonging to Class I and Class II are entitled and also the nature of their work and the work the powers enjoyed by them were are of the view that fixation of different ages of retirement to the different classes of employees would not by itself be violative of Articles 14 and 16 of the Constitution. In Tejinder Singh v. Bharat Petroleum Corporation Ltd. ((1986) 4 SCC 237 : 1936 SCC (L&S) 765), this court has observed at page 239 thus : [SCC (L&S) pp. 767-68], (para 4)

> This Court in Workmen v. Bharat Petroleum Corpn. Ltd. ((1983) 4 SCC 470 : 1983 SCC (L&S) 536), directed the retirement age of the clerical staff of the Refinery Division of respondent 1 to be fixed at 60 years. Petitioners have contended that the disparity in the age of retirement between two groups of employees gives rise to discriminatory treatment. This stand is not tenable for more than one reason. Clerical staff and officers of the management staff belong to separate classifications and no argument is necessary in support of it. Petitioners have not contended and perhaps could not legitimately contend, that the two classes of officers stand at par. In the

> Workmen case ((1983) 4 SCC 470 : 1983 SCC (L&S) 536) itself, this Court did not extend the benefit of superannuation at the age of 60 to all clerical staff but limited the same to that category of employees working in the Refinery Division, Bombay. Classification on the basis of reasonable differential is a well known basis and we are of the view that the petitioners are not entitled in the facts of the case to seek support from Article 14 for their claim.

26. It was, however, contended on behalf of respondent 1 that since he had been recruited originally into the Class III post and he would have had the benefit or retirement at the age of 60 years if he had remained in that class, the said benefit cannot be denied to him on his promotion to the Class I category. We do not find any merit in this contention too. When respondent 1 was promoted to the Class I post in 1963 the age of retirement of officers in the Class I post had been fixed at 57 years and was not different from the age of retirement of Class III employees. It was only in 1965 under the settlement that the age of retirement of employees in Class III and Class IV who joined service after September 1, 1956 was raised to 60 years. If he felt that the conditions of service of Class I officers were likely to be prejudicial to him he could have refused the promotion offered to him. Having accepted the promotion along with the higher benefits flowing from it he cannot contend after several years that he had prejudicially affected by the condition relating to the age of retirement applicable to Class I officers appointed after September 1, 1956. That apart the higher emoluments and other perquisites to which Class I employees may be entitled to and the better conditions of work which are enjoyed by them substantially compensate the effect of the lowering of the age of retirement from 60 years to 58 years. We do not find any substance in the argument urged on behalf of respondent I relying upon the judgment of this Court in Roshan Lal Tandon v. Union of India ((1968) 1 SCR 185 : AIR 1967 SC 1889 : (1968) 1 Lab LJ 576) which lays down that when employees are recruited to a lower grade from two sources no favourable treatment should be extended to recruits from one source on their promotion to the higher grade. In the decision, referred to above, the facts were these. Vacancies in grade 'D' of Train Examiners were filled by (a) direct recruits i.e., apprentice train examiners who had completed the prescribed period of training, and (b) promotees from skilled artisans. Promotion from grade 'D' to 'C' was on the basis of seniority-cum-suitability. In October 1965 the Railway Board issued a notification by which it was provided that 80 per cent of the vacancies in grade 'C' were to be filled up from apprentice train examiners recruited on or after April 1, 1966 and the remaining 20 per cent by train examiners from grade 'D'. The notification further provided that apprentice train examiners who had already been absorbed in grade 'D' before April 1966 should en bloc be accommodated in grade 'C' in the 80 per cent of the vacancies without undergoing any selection and with regard to 20 per cent of the vacancies, reserved for the other class promotion was to be on selection basis and on the basis of seniority-cum-suitability. The petitioner in the said case who entered railway service in 1954 as a skilled artisan and was selected and confirmed in grade 'D' challenged that part of the notification which gave favourable treatment to apprentice train examiners who had already been absorbed in grade 'D' as arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution. This Court held that when once the direct recruits and promotees were absorbed in one cadre they formed one class and they could not be distinguished again for the purpose of further promotion to the higher grade 'C'. The court further observed that before the impugned notification was issued there was only one rule of promotion applicable to both direct recruits and promotees but by the impugned notification discriminatory treatment was made in favour of the apprentice train examiners who had already been absorbed in grade 'D'. The court, therefore, held that the notification was discriminatory. This decision has no relevance to the present case although the High Court has relied on it in deciding this case. We have already shown that he Act itself made a

distinction between the transferred employees and the employees recruited to the service of the Corporation after September 1, 1956 by making amendments in Section 11 and in clauses (b) and (bb) of sub-section (2) of Section 49 of the Act. In the (staff) Regulations, 1956 and the (Staff) Regulations, 1960 there was again a distinction made between the transferred employees and employees recruited after September 1, 1956. We find that the distinction between the two classes is recognised by Parliament even as late as 1981 when it amended Section 49 of the Act by deleting clause (bb) of sub-section (2) thereof and by amending Section 48 of the Act by introducing clause (cc) in sub-section (2) and the new sub-section (2-1) in it. After the amendment, the relevant part of Section 48 reads thus :

> 48(2)(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; ....
>
> (2-A) 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.

27. Clause (cc) of Section 48(2) of the Act, however, has been given retrospective effect from June 20, 1979. Sub-section (2-A) of Section 48 has given statutory recognition to the (Staff) Regulations of 1960 and in particular to Regulation 19(2) as amended in 1977 which is impugned in these proceedings. It is thus seen that at no point of time the transferred employees were integrated into one cadre with the employees appointed after September 1, 1956 as such and the transferred employees appointed after September 1, 1956 as such and the transferred employees have retained their birthmarks throughout. The fact that the pay, allowances and other conditions of service have been made the same in respect of both the transferred employees and the employees of the Corporation recruited after September 1, 1956 has not brought about the integration of the two classes of employees into one single cadre. Even the High court in the instant case accepts that it was just and proper to extend the benefit of the higher age of retirement to the transferred employees but it has held that when once a transferred employee is promoted he would lose the right to a special treatment as regards the age of superannuation. The relevant portion of the judgment of the High Court reads thus :

> A reasonable classification which prevents a court from dissecting it is one which includes all persons who are similarly situated with respect to the purpose of law or objective which the rule or section seeks to achieve. The apparent or inherent intention sought to be achieved by the Regulation framed by Corporation was to continue up to age of 60 years the employees of insurers as the age of superannuation in some of the companies was 60 and to derive benefit from expertise and experience of employees who had worked with insurers. May be laudable reasonable and proper. But is it like that ? Obviously not. An employee in Class III of insurer could be continued up to 60. But what happens when he climbs the ladder of promotion and reaches Class I. Does he still carry the stamp of experience and expertise of having worked with insurer ? Once a transferred employee of Class III and a direct appointee in (that) class are promoted to Class I obviously on merit, efficiency and

> seniority then how can the distinction of 'transferred' and 'direct' be maintained. So long employee are in Class III they can be said to constitute two different classes of transferred and direct appointees but once they are promoted they become similarly situated and the distinction stands obliterated. They on promotion form one integrated cadre of Class I officers. To segregate them here for purposes of retirement is invidious when their pay, responsibility and benefits are same.

28. While we agree with the first part of the observations made in the above extract from the judgment of the High Court, namely, that it was not discriminatory to extend the benefit of the age of 60 years to the transferred employees we do not agree with the latter part of the observations made therein which suggests that on promotion from Class III to Class I the transferred employees and the directly recruited employees would lose their birthmarks. Pathak, J., as he then was, has observed in D. J. Bahadur case ((1981) 1 SCR 1083 : (1981) 1 SCC 315 : 1981 SCC (L&S) 111 : AIR 1980 SC 2181), that it is open to the government to make an order under Section 11(2) of the Act from time to time in respect of the transferred employees and that power is not exhausted when it is exercised once. It suggests that the transferred employees are always amenable for separate treatment and they do not lose their identity. It appears to be the intention of Parliament even as late as in 1981 that the two categories of employees, namely, the transferred employees and employees recruited after September 1, 1956 in the Corporation should be kept separate. In these circumstances the High Court was in error in relying upon the judgment of this Court in Roshan Lal Tandon case ((1968) 1 SCR 185 : AIR 1967 SC 1889 : (1968) 1 Lab LJ 576).

29. In O.P. No. 5295 1985 and connected cases on the file of the High Court of Kerala which was decided on February 4, 1987 the claim of the employees of the Corporation belonging to Class I but appointed after September 1, 1956 to continue in service till they attained the age of 60 years arose for consideration. The High Court has negatived it. In the course of its judgment it has referred to the judgment under appeal in this case but has only distinguished it. The High Court of Kerala was right in not following the decision of the High Court of Allahabad which is now under appeal. It, however, distinguished it on the ground that the employees in question had not been promoted from Class III to Class I as it was the case here but the petitioners before it had continued in Class I or Class II right from the commencement. We, however, approve of the reasons given by the High Court of Kerala in holding that the employees of the Corporation belonging to Class I and Class II who had entered service of the Corporation after September 1, 1956 were not entitled to continue in service beyond the age of 58 years. In our view the fact that an employee had entered the service of the Corporation after September 1, 1956 in a Class III post and is later on promoted to a Class I post does not make any difference insofar as the question which arises for decision before us. The High Court of Delhi has rejected two petitions in which the very question raised in this case arose for consideration, namely, N. L. Aneja v. Union of India (Civil Writ No. 1911 of 1986) and H. S. Kochar v. L. I. C. (C.W. No. 1660 of 1986) at stage of admission itself giving reasons, though short, for its orders. The two decisions, referred to above, have been rendered by two different Division Benches.

30. We may also refer to one decision of the Madras High Court and another decision of the Calcutta High Court which arose under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Act 5 of 1970) where again the claim of employees of the banks in question who joined their servant after nationalisation to the benefit of the conditions prescribed in the case of employees of the former banking companies whose services were taken over on nationalisation as regards the age of retirement services were taken over on nationalisation as regards the age of retirement arose for consideration. The scheme of Section 12(2) of the

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the scheme of Section 11(1) of the Act, which is under consideration before us, were the same. In Govindarajulu v. Management of Union Bank of India (Writ Petition No. 5486 of 1980, decided on November 21, 1986 (Mad HC)) the High Court of Madras rejected the said claim by its judgment dated November 21, 1986. In Dr. Nikhil Bhushan Chandra v. Union of India (Civil Order No. 13958 (W) of 1980, decided on December 21, 1982 (Cal HC)) decided on December 21, 1982 the High Court of Calcutta has rejected a similar claim. We may at this stage refer to a recent decision of this Court in Miss Lena Khan v. Union of India ((1987) 2 SCC 402 : 1987 SCC (L&S) 127) in which the validity of the continuation of some foreign air hostesses beyond the prescribed age of retirement came up for consideration. The court rejected the petition stating that the management of Air India having taken a decision "to phase out U.K. incumbents when they attain the age of 45", it was not discriminatory to air hostesses of Indian origin who were to retire at the age of 35 years and was not unconstitutional. The principle enunciated in this case can be applied to the cases of three officers who belong to the Department of Insurance who joined the service of the Corporation after resigning their posts in the Government of India in the year 1965, there being no chance of any addition to their class.

31. Classification of employees into two categories for purposes of fixing the age of superannuation depending upon their dates of entry into service when the necessity for doing so arises on account of certain historical reasons is not unknown. This Court had to deal with a case involving a similar situation in Railway Board v. A. Pitchumani ((1972) 2 SCR 187 : (1972) 4 SCC 608 : AIR 1972 SC 508). Several railway companies which were running their own railways in different parts of India were amalgamated with the Indian Railway Administration in 1947. On such amalgamation servants of the railway companies, whose railways were taken over, became the employees of the Indian Railways Administration. On the absorption of the services of the servants of the previous railways companies fit became necessary for the Indian Railways Administration to frame rules with regard to their conditions of service including the determination of the age of retirement of those railways employees. Accordingly Rule 2046 (FR 56) of the Indian Railway Fundamental Rules had to be modified. That rule was, therefore, substituted by a new rule on January 11, 1967. The new rule read as follows :

> 2046 (FR 56) (a) Except as otherwise provided in this rule, every railway servant shall retire on the day he attains the age of 58 years.
>
> (b) A ministerial railways servant who entered government service on or before March 21, 1938 and held on that date -
>
> (i) a lien or a suspended lien on a permanent post, or
>
> (ii) a permanent post in a provisional substantive capacity under clause (d) of Rule 2008 and continued to hold the same without interruption until he was confirmed in that post, shall be retained in service till the day he attains the age of sixty years.

Note. - For the purpose of this clause, the expression "government service" includes service rendered in ex-company, and ex-State Railways, and in a former provincial government.

In the above new rule every railway servant, whose case did not fall under clause (b) of that rule was required to retire on the date he attained the age of 58 years. Clause (b), however, provided that every ministerial railway servant who had entered the government service on or before March 31,

1938 and who thereof was entitled to continue in service till he attained the age of 60 years. As may be seen from that rule, the classification of the employees was made on the basis of the date of entry into the service of the government. That clause (b) of the said rule applied also to the employees of ex-companies and ex-State railways, which were taken over by the Indian Railway Administration is clear from the note attached to clause (b) of Rule 2046 which provided that for the purpose of that clause the expression 'government service' included service rendered in ex-company and ex-State railways and in a former provincial government. On December 12, 1967 the Indian Railways Administration substituted the note attached to clause (b) of Rule 2046 by the new note which read thus :

> For the purpose of this clause the expression 'government service' includes service rendered in a former provincial government and in ex-company and ex-State Railways, if the rules of the Company or the State had a provision similar to clause (b) above.

The effect of the new note was that an employee who satisfied the condition in sub-clause (i) or sub-clause (ii) of Clause (b) was entitled to continue up to 60 years after December 23, 1967 only if the rules of the company in which he was formerly had a provision similar to clause (b) of Rule 2046 which fixed the age of retirement at 60 years. The respondent in that case, that is A. Pitchumani while he was entitled before December 23, 1967 to continue in service till he attained the age of 60 years as he had joined the service of the Madras and Southern Mahratta Railway Company on August 16, 1927 i.e., prior to March 31, 1938 and satisfied the other conditions mentioned in Clause (b) of Rule 2046 could not have the benefit of the clause on and after December 23, 1967 since in the Madras and Southern Mahratta Railway Company where he was formerly working there was no rule similar to clause (b) as regards the age of retirement. He was asked to retire from service on April 14, 1968 on which date he was completing the age of 58 years. The respondent, A. Pitchumani questioned before the High Court of Mysore (Karnataka) the validity of the note substituted by the order dated December 23, 1967 which took away his right to continue in service till he attained the age of 60 years which he otherwise possessed before the introduction of the said note. The High Court of Mysore struck down a part of the new note only on the ground that it was discriminatory and directed that the respondent. A. Pitchumani should be allowed to continue in the service till he completed the age of 60 years. On appeal, the judgment of the High Court was affirmed by this Court in Railway Board v. A. Pitchumani ((1972) 2 SCR 187 : (1972) 4 SCC 608 : AIR 1972 SC 508). This Court did not find fault with the classification that had been made between the persons falling under Clause (a) and persons falling under clause (b) on the basis of the date of entry into service since clauses (a) and (b) of Rule 2046 had uniform application to all the employees of the Indian Railway Administration who came within the respective clauses. It however, agreeing with the High Court found fault with the classification of the employees falling under clause (b) into two categories, namely, those employees belonging to a company where there was a rule similar to clause (b) as regards the age of superannuation and those employees who came from companies where there was no rule similar to clause (b) as regards the age of superannuation in Manindra Chandra Sen v. Union of India (AIR 1973 Cal 385 : 1973 Lab IC 1162), Sabyasachi Mukharji, J., has upheld the said classification of railway employees into two categories viz. those who joined on or before March 31, 1938 and those who joined after March 31, 1938 for purposes of fixing the age of superannuation on the basis of same historical facts which are set our in detail in that judgment. Such classification for purposes of fixing the age of superannuation depending upon the date entry into service is not, therefore, something which is unusual and such classification becomes necessary on account of historical facts and the need for treating the employees in a fair and just way.

32. On behalf of respondent 1 reliance is placed on the decision of this Court in M/s. British Paints (India) Ltd. v. Workmen ((1965) 2 SCR 523 : AIR 1966 SC 732 : (1966) 1 Lab LJ 407) in support of his case that there should be no discrimination amongst the employees of an establishment with regard to the age superannuation. That decision was rendered in an appeal against an award passed by an Industrial Tribunal. In that decision this Court has, no doubt, observed that generally speaking there should not be any difference in the age of retirement of existing workmen and other to be employed in future unless there are special circumstances justifying such difference. By making the above observation this Court has virtually accepted the position that when there are special circumstances justifying the difference, it is open to fix different ages of retirement for the employees of an establishment in appropriate cases. We have already explained earlier the reason for treating the transferred employees differently from the employees appointed after September 1, 1956 by the Corporation. The transferred employees who are treated favourably belong to a vanishing group and, perhaps, within a period of few years none of them would be in the service of the Corporation, namely, those appointed subsequent to September 1, 1956 by the Corporation in respect of whom the Corporation has fixed the age of retirement as 58 years which corresponds to the age of retirement in almost all the public sector establishments, the Central Government services and the State Government services and the State Government services.

33. Respondent 1 cannot derive any assistance from the decision of this Court in Mohammad Shujat Ali v. Union of India ((1975) 1 SCR 449 : (1975) 3 SCC 76 : (1974) SCC (L&S) 454 : AIR 1974 SC 1631) in support of his case before us. In the above decision this Court was concerned with reservation of posts for graduate Supervisors in the cadre of Assistant Engineers giving them a preferential treatment over non-graduate Supervisors who were also eligible to be promoted along with the graduate Supervisors to the cadre of Assistant Engineers after the graduates and non-graduates had been integrated into one cadre of Supervisors. Merely because the pay, allowances and other perquisites drawn by the transferred employees and by the employees appointed after September 1, 1956 by the Corporation are the same it cannot be said that the transferred employees and the other employees had been integrated so as to form one cadre. So far as the age of retirement is concerned as it is already shown they are being treated differently right from the date on which the Corporation was established.

34. The decision of this Court in Workmen v. Bharat Petroleum Corporation Ltd. ((1984) 1 SCR 251 : (1983) 4 SCC 470 : 1983 SCC (L&S) 536 : AIR 1984 SC 356) no doubt that under the modern conditions there is a general trend in favour of raising the age of retirement in the case of employees in industrial establishments. It may be so. We are not concerned in this case with the question whether the age of retirement of employees who have joined the service of the Corporation after September 1, 1956 should be raised to 60 years. That is a matter of policy which has got to be decided by the Corporation and the Central Government. We are only concerned with the question whether the employees appointed after September 1, 1956 have been subjected to any hostile discrimination while fixing the age of retirement contrary to Article 14 and Article 16 of the Constitution. Since the classification of the employees for the purpose of age of retirement into two categories in this case appears to us to be reasonable and not arbitrary and that there is a reasonable nexus between the classification and the object to be attained thereby, it is not possible to hold that Regulation 19(2) is violative of Articles 14 and 16 of the Constitution.

35. We may at this stage refer to the following passage in Tamil Nadu Education Department Ministerial and General Subordinate Service Association v. State of Tamil Nadu ((1980) 1 SCR 1026, 1031 : (1980) 3 SCC 97 : 1980 (L&S) 294 : AIR 1980 SC 379) : [SCC pp. 99, SCC (L&S) p. 296, para 7]

> In Service, Jurisprudence integration is a complicated administrative problem where, in doing broad justice to many, some bruise to a few cannot be ruled out. Some play in the joints, even some wobbling, must be left to government without fussy forensic monitoring, since the administration has been entrusted by the Constitution to the executive, not to the court.

All life, including administrative life, involves experiment, trial and error, but with the leading strings of fundamental rights, and, absent unconstitutional 'excesses', judicial correction is not right. Under Article 32, this Court is the constitutional sentinel, not the national ombudsman. We need an ombudsman but the court cannot make-do.

36. The decision taken by the Corporation and the Central Government as regards the ages of retirement of the different classes of the employees of the Corporation in the instant case is a bona fide one and cannot be characterised as unreasonable. It is not, therefore, liable to be upset by a decision of the court. On a careful consideration of all the aspects of the case we feel that the High Court erred in striking down Regulation 19 (2) of the (Staff) Regulations, 1960 as amended in the year 1977, and in directing the Corporation to continue respondent 1 in its service till he completed the age of 60 years. We, therefore, set aside the a judgment of the High Court and dismiss the writ petition filed in the High Court. The appeals are accordingly allowed. There shall, however, be no order as to costs.

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