

# **BOMBAY HIGH COURT**

Christopher Pimenla

Vs.

Life Insurance Corporation of India

Misc. Appln. No. 343 of 1956

(K.T. Desai, J.)

16.04.1957

## **ORDER**

**K.T. Desai, J.**

1. The first and the second petitioners were clerks employed by the Bombay Life Assurance Co. Ltd. immediately prior to 1st September, 1956. The third petitioner was a clerk then employed by the Oriental Government Security Life Assurance Co. Ltd. The fourth petitioner was a clerk then employed by the Hindustan Co-operative Insurance Society Ltd. The fifth petitioner was then employed as an assistant doing clerical work by the New India Assurance Co. Ltd. at Bombay. The sixth petitioner was a peon then employed by the New India Assurance Co. Ltd. at Bombay. The seventh petitioner was then employed as a clerk by the National Insurance Co. Ltd. On 19th January, 1956, the President of India promulgated an Ordinance called The Life Insurance (Emergency Provisions) Ordinance, 1956. Under that Ordinance, on and from the appointed day, that is, the 19th January, 1956, the management of the controlled business of all the insurers carrying on life insurance business vested in the Central Government. The said Ordinance was repealed and replaced by the Life Insurance (Emergency Provisions) Act, 1956. On 18th June, 1956, the Life Insurance Corporation Act, 1956, was enacted. That Act came into force on the 1st July, 1956. Under Section 7 of that Act, on the appointed day, that is, the date on which the Life Insurance Corporation of India was established viz., 1st September, 1956, all the assets and liabilities appertaining to the controlled business of all insurers were transferred to and vested in the Life Insurance Corporation of India, the respondent to the petition. The controlled business referred to in the said section included all the business appertaining to life insurance business of the insurers. Under Section 11 of the Life Insurance Corporation Act, 1956, the petitioners became the employees of the Corporation on and from the appointed day.

2. The petitioners have prayed for a writ of mandamus and/or other appropriate writs, orders or directions under Article 226 of the Constitution of India and/or an order under Section 45 of the

Specific Relief Act against the Corporation directing the Corporation to cancel and/or withdraw and/or forbear from implementing and/or giving effect to and/or in any way enforcing the alterations in the terms and conditions of service as contained in "the Summary" dated the 10th September, 1956, being Ex. F to the petition, and/or "the instructions" issued by the Corporation on 18th September, 1956, being Ex. G to the petition and/or in "the Summary" dated 24th December, 1956 (being Exhibit No. 2 to the affidavit of Mr. T. S. Swaminathan, dated 9th February, 1957) and/or those purported to be prescribed in the letter dated 21st February, 1957 (being Ex. No. 1 to the affidavit of Mr. T. S. Swaminathan, dated 7th March 1957). The petitioners have further prayed for the issue of a writ of mandamus and/or appropriate writs, orders or directions under Article 226 of the Constitution of India or an order under Section 45 of the Specific Relief Act against the Corporation directing the Corporation to give effect and to continue to give effect to the awards, settlements and agreements being Exhibits A, B, C, D and E to the petition subsequent to 31st August, 1956. They have further prayed for an order and injunction restraining the Corporation, its servants and agents from implementing and/or giving effect to and/or in any way enforcing the said alterations in the terms and conditions of service or any part thereof.

3. The material circumstances giving rise to the petition are as hereinafter stated : Prior to and on 1st September 1956, the scales of pay and other terms and conditions of service of the first and second petitioners as also of about 300 other employees of the Bombay Life Assurance Co. Ltd. were governed by an award of the Industrial Tribunal, dated 12th May 1954. The said award was published on 11th June, 1954 and is contained in Ex. A to the petition. Prior to and on 1st September, 1956, the scales of pay and other terms and conditions of service of the third petitioner and about 2000 other employees employed by the Oriental Government Security Life Assurance Co. Ltd. at Bombay and elsewhere in India were governed by a Memorandum of Settlement dated 22nd September, 1955 arrived at between the Oriental Government Security Life Assurance Co. Ltd. and the representatives of its employees. That settlement was to remain in force up to 31st December, 1957 and was thereafter to continue to remain in force until the expiry of two months from the date on which a notice in writing for terminating the said settlement was given by either party thereto to the other party. A print of the said Memorandum of Settlement is annexed to the petition and marked Ex. B. The fourth petitioner and over 1000 other employees employed by the Hindustan Co-operative Insurance Society Ltd. were prior to and on 1st September, 1956 governed by the terms of settlement dated 16th December, 1955 arrived at in the course of conciliation proceedings before Shri M. M. Mukherjee, Conciliation Officer (Central) Calcutta. The said settlement was to remain in force for 2 years from the date of the signing of the said agreement. A print of the said terms of settlement is annexed to the petition and marked Ex. C. The scales of pay and other terms and conditions of service of the workmen of the New India Assurance Co. Ltd. at Calcutta were governed by an award, dated 12th August, 1954, of the Industrial Tribunal given in the industrial dispute between the New India Assurance Co. Ltd. and their workmen at Calcutta. Following upon that award the New India Assurance Co. Ltd. entered into a settlement of pending industrial disputes with its

workmen employed at Bombay. The said settlement was arrived at in the course of conciliation proceedings before the Conciliation Officer (Central), Bombay, before whom the said settlement was signed by the parties on 15th December, 1954. The said settlement provides for the scales of pay and other terms and conditions of service of the employees of the New India Assurance Co. Ltd. at Bombay including the 5th and the 6th petitioners. The said award and the said settlement were in force prior to and on 1st September, 1956. A copy of the relevant portion of the said award and the said settlement is annexed to the petition and marked Ex. D. Prior to and on 1st September, 1956 the scales of pay and other terms and conditions of service of the seventh petitioner and other employees of the National Insurance Co. Ltd. were governed by a settlement dated 10th June, 1955 arrived at between the said company and the representatives of its employees. A copy of the said settlement is annexed to the petition, and marked Ex. E.

4. The petitioners contend that by virtue of the provisions of Section 18(c) of the Industrial Disputes Act, 1947, as well as by virtue of the provisions of Section 11 (1) of the Life Insurance Corporation Act, 1956, the terms and conditions of service as embodied in the said awards and settlements continued to apply to them as before even after their services had been transferred to the Corporation. On 10th September, 1956, the Corporation issued what is called a "Summary of pay scales and other conditions of service applicable to supervisory, clerical and subordinate staff." The terms and conditions therein contained were purported to be made applicable to the employees of the Corporation, including the petitioners with effect from 1st September, 1956. The terms and conditions therein mentioned were different from the terms and conditions of service which were applicable to the petitioners prior thereto. The said Summary of pay scales and other conditions of service is annexed as Ex. F to the petition. On 18th September, 1956 the Managing Director of the Corporation issued instructions in writing to all zonal, divisional and assistant divisional managers in-charge of integrated units regarding selection of Superintendents, section heads and assistants. Under the said "instructions" directions were inter alia given for placing persons referred to therein in the newly created assistant's grade. The said "instructions" are Ex. G to the petition. On 15th October, 1956 the petitioners filed the present petition. Thereafter a message from the Chairman of the Corporation was issued to the offices of the Corporation on 24th October, 1956. That message is Ex. 1 to the affidavit of Shri T. S. Swaminathan, dated 9th February, 1957, showing cause against the petition. In that message it has been stated that the intention of the Corporation all along had been that the existing employees should continue to enjoy the full benefits of their existing, i.e. pre-Corporation pay scales, allowances and other terms and conditions of service, if they find that they are to their advantage as compared to the new pay scales, etc. It is further stated in the said message that it was definitely the intention to ensure that all existing employees would continue to receive year after year, throughout the duration of their service, the same emoluments as they would have received if they had continued in their original scales of pay and dearness allowance, subject only to their possessing the required standards of efficiency. During the pendency of the petition, on 22nd December 1956, the Managing Director of the Corporation addressed a letter to the Joint Secretary to the Government of India, Ministry of Finance, Department of Economic Affairs,

New Delhi. The said letter runs as under :-

"Dear Sir,

Sub : Section 11 of the Life Insurance Corporation Act, 1956 (Act 31 of 1956).

We are forwarding herewith a Summary of Pay Scales and other service conditions applicable to the supervisory, clerical and subordinate staff of the Corporation. We shall be grateful if you could kindly convey to us the approval of the same by the Central Government."

That letter is Ex. 1 in the case. On 24th December, 1956 the Joint Secretary to the Government of India sent a reply to the Managing Director of the Corporation stating as under:-

"I am directed to convey the approval of the Central Government in terms of section 11 of the Life Insurance Corporation Act, 1956 (Act No. 31 of 1956) to the salary, pay scales and the service conditions applicable to the supervisory, clerical and subordinate staff of the Corporation, forwarded with your letter dated 22nd December. 1956."

The summary of pay scales and other conditions of service as approved by the Central Government is annexed as Ex. No. 2 to the affidavit of Sri T. S. Swaminathan, dated 9-2-1957.

5. It would be necessary at this stage to set out the provisions of Section 11 of the Act under which the sanction of the Central Government was purported to be sought and granted. Section 11 of the Act runs as under:

"11. Transfer of service of existing employees of insurers to the Corporation-

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

Provided that nothing contained in this subsection shall apply to any such employee who has, by notice in writing given to the Central Government prior to the appointed day, intimated his intention of not becoming an employee of the Corporation.

(2) Notwithstanding anything contained in subsection (1) or in any contract of service, the Central Government may, for the purposes of rationalizing 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 policyholders 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.

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

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

(4) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force, the transfer of the services of any employee of an insurer to the Corporation shall not entitle any such employee to any compensation under that Act or other law, and no such claim shall be entertained by any Court, tribunal or other authority."

6. By the affidavit of Sri T. S. Swaminathan. dated 9-2-1957, the respondent contended that the respondent had a right in law with the consent of the Central Government, to alter and reduce the remuneration and the terms and conditions of service. The said contention has been reiterated several times in the course of the said affidavit. When the matter reached hearing before me on 7-2-1957, it was pointed out that Section 11 did not warrant that contention. After the matter was discussed at some length the parties applied for an adjournment in order that the Corporation and those representing the employees of the Corporation may arrive at some suitable arrangement. No such arrangement was arrived at. Before the hearing of the matter was resumed, the Joint Secretary to the Government of India addressed a letter, dated 21-2-1957, to the Managing Director of the Corporation, stating as under:

"Sir,

Subject : Section 11 of the Life Insurance Corporation Act, 1956 (Act 31 of 1956),

In continuation of this Ministry's letter No. JS (1) - Ins. 57 (B'bay) dated 24-12-1956, I am directed to say that after due consideration of all the circumstances and materials including the new pay-scales and service conditions prepared by the Corporation for all its employees in the supervisory, clerical and subordinate grades and for the purpose of rationalization, the Central Government in pursuance of the powers conferred by Sub-Section (2) of Section 11 of the Life Insurance Corporation Act have altered the terms of service of the employees of the Corporation as to their remuneration in terms of the new pay-scales and service conditions as prepared by the Corporation and submitted by it to Government by its letter dated 22-12-1956 and approved in the letter dated 24-12-1956 referred to, and the Central Government hereby lays down and prescribes the terms of the

said new pay-scales and service conditions for employees of the Corporation in the supervisory, clerical and subordinate grades as from the 1st day of September 1956."

A copy of this letter is annexed as Ex. 1 to the affidavit of Shri T.S. Swaminathan, dated 4-3-1957. On 7-3-1957, Sri T. S. Swaminathan made another affidavit showing cause against the petition. In paragraph 4 of that affidavit it has been stated that the submissions made in paras 2, 3, 7 and 9 and elsewhere of his said affidavit, dated 9-2-1957, that under the terms of Sub-Section (2) of Section 11 of the Life Insurance Corporation Act, the Corporation had the right in law with the consent of the Central Government to change the pay-scales and service conditions "had been incorrectly worded", and that the submission of the Corporation was that under subsection (1) of Section 11 of the said Act the Corporation had the right to alter the remuneration, terms and conditions of service of all the employees of the various Units taken over by the Corporation, and that apart from that right, Government had the right under Sub-Section (2) of the said section to alter the terms of service of the employees as to their remuneration in such manner as it thought fit, and that the Government had done so by its letter dated 21-2-1957. That letter is again annexed as Ex. No. 1 to the said affidavit dated 7-3-1957. The petitioners have challenged the action of the Central Government as set out in its letters dated 24-12-1956 and 21-2-1957 and the necessary amendments have been made in the petition.

7. As the action of the Central Government was challenged by the petitioners, notice of the petition was given to the Central Government. The learned Advocate General represented the Central Government before me.

8. Mr. Vimadalal, the learned counsel for the Corporation has raised two objections to the maintainability of the petition. He says that under the Industrial Disputes Act, 1947, and the Payment of Wages Act, an alternative remedy was available to the petitioners in respect of any unilateral change that may be made in their conditions of service and that the petition as framed was not maintainable. He further contends that no writ lies against the Corporation acting not in its public, but in its private capacity. He says that the act of the Corporation is its private act and that the petition is not maintainable. There does not appear to be any merit in either of these contentions.

9. As regards the first contention, the powers of the Corporation and of the Central Government are sought to be challenged by the petition. A petition for the issue of a writ is the proper remedy for the purpose. An application under the Industrial Disputes Act, 1947, or the Payment of Wages Act is not an adequate legal remedy.

10. As regards the second contention, Mr. Vimadalal has drawn my attention to a passage from Halsbury's Laws of England, 3rd Edition, Vol. 11, page 105, paragraph 195. It is stated in the said para that the order of mandamus

"is only granted to compel the performance of duties or a public nature. It will not accordingly issue for a private purpose, that is to say, for the enforcement of a merely private right. The Court will not, therefore, interfere in cases of dispute between members of private corporations, even though carrying on business under a royal charter."

The Corporation is a Public Corporation. The acts purported to be done by the Corporation and by the Central Government are those done in the purported exercise of the statutory powers purported to have been conferred upon the Corporation and the Central Government. I do not see why the petition for the issue of a writ does not lie. Section 45 of the Specific Relief Act in terms lays down that an order can be made under that section against a Corporation when the doing or forbearing of any act is under any law for the time being in force, clearly incumbent on such Corporation in its corporate character. The preliminary objections are of no substance and they fail.

11. It has been urged by Mr. Buch, the learned counsel for the petitioners, that the awards and settlements referred to in Exhibits A to E to the petition are binding on the Corporation as successors to the various establishments taken over by the Corporation by virtue of the provisions of Section 18 of the industrial Disputes Act. Section 18 of the Industrial Disputes Act runs as under:

"18. A settlement arrived at in the course of conciliation proceedings under this Act or an award which has become enforceable shall be binding on

- (a) all parties to the industrial dispute;
- (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board or Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;
- (c) where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in Clause (a) or Clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

He further points out that under Section 19 of that Act if the settlements and awards are once considered binding on the Corporation, the provisions of such settlements and awards were not liable to be altered during the period of their subsistence, as set out in the said section. Section 19 of the said Act provides as under:

"19(1) A settlement arrived at in the course of a conciliation proceeding under this Act shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is

signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year : Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit : Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

(4) Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it to a Tribunal for decision whether the period of operation should not, by reason of such change, be shortened and the decision of the Tribunal on such reference shall, subject to the provision for appeal, be final.

(5) Nothing contained in Sub-Section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

(6) Notwithstanding the expiry of the period of operation under Sub-Section (3), award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

(7) In the computation of the period of operation of an award under Sub-Section (3), the period during which the implementation of the award is stayed by the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950, shall be excluded."

Mr. Buch further relied upon a judgment of a Division Bench of this Court consisting of Mr. Justice Shah and Mr. Justice Gokhale, delivered on 25-2-1957 in *Mangaldas Narandas v. Payment of Wages Authority, Ahmedabad*<sup>1</sup>, After setting out the provisions of Section 19 of the Industrial Disputes Act, Mr. Justice Shah observes as under :

"When an award is delivered by the Industrial Tribunal it has the effect of imposing a statutory contract governing the relations of the employer and the employee. It is true that that statutory contract may be terminated in the manner prescribed by Sub-Section (6) of Section 19. After the statutory contract is terminated by notice the employer by failing to abide by the terms of the award does not incur the penalties provided by the Industrial Disputes Act, nor can the award be enforced in the manner prescribed by Section 20 of

the Industrial Disputes (Appellate Tribunal) Act, 1950. But the termination of the award has, in our judgment, not the effect of extinguishing the rights flowing therefrom. Evidently by the termination of the award the contract of employment is not terminated. The employer and the employee remain master and servant in the industry in which they are engaged, unless by notice the employer has also simultaneously with the termination of the award terminated the employment of the employee. If the employment is not terminated, it is difficult to hold that the rights which had been granted under the award automatically cease to be effective from the date on which notice of termination of the award becomes effective. In our judgment, the effect of termination of the award is only to prevent enforcement of the obligations under the award in the manner prescribed but the rights and obligations which flowed from the award are not wiped out." The learned Judge has further observed as follows:

"Even after the award is determined in the manner provided by Sub-Section (6), the obligations created by the award can in our judgment be altered by a fresh contract or a fresh adjudication under the Industrial Disputes Act and not otherwise. The Industrial Disputes Act has been enacted with the object of securing harmonious relations in the working of the industry between the employer and the employee by providing a machinery for adjudication of disputes between them; and the object of the legislature would be frustrated if after every few months by unilateral action, the employer or the employees may be entitled to reopen the dispute and ignore the obligations declared to be binding by the process of adjudication. We are therefore of the view that the termination of an award by notice has not the effect of terminating the obligations flowing from the award.

12. Having regard to the provisions of the Life Insurance Corporation Act, 1956, it cannot be disputed that the Corporation is the successor in respect of the various establishments taken over by the Corporation. The Corporation being a successor to the establishments

<sup>1</sup> Special Civil Ap-plns. Nos. 176 to 179 of 1956 (Bom)

would be bound by the awards and settlements arrived at by virtue of the provisions of Section 18 (c) of the Industrial Disputes Act if the establishments taken over by the Corporation have continued to exist. The period of operation of the said awards and the said settlements has not come to an end. The question for consideration is whether the establishments taken over by the Corporation have retained their individual character and existence or have been so integrated and merged in the Corporation that they could be said to have ceased to exist. The expression "establishment" has nowhere been defined. That expression has been referred to at various places in the Industrial Disputes Act, 1947. That expression has been used in defining a banking company in Section 2 (bb). Under that section a "banking company" has been defined to mean a banking company as defined in Section 5 of the Banking Companies Act, 1949 (X of 1949) having branches or other establishments in more than one State and includes the Imperial Bank of India. That expression has also been used in Section 2 (kk). By that section an insurance company has been defined to mean an insurance company as defined in Section 2 of the

Insurance Act, 1938 (IV of 1938) having branches or other establishments in more than one State. The expression "establishment" is also used in Section 2 (n) (ii) while defining a public utility service. It is stated there that a public utility service means any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends. It has also been used in Section 10 (5). It is stated there that where a dispute concerning any establishment or establishments has been, or is to be referred to a Tribunal under that section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments. From the use of the expression "establishment" in the Act it seems to be fairly clear that the establishment must exist in some definite and identifiable form. My attention has been drawn by Mr. Vimadlal to the dictionary meaning of the word "establishment" as given in Webster's International Dictionary (Vol I) at page 874. It is there stated to mean

"the place where one is permanently fixed for residence or business; residence, including grounds, furniture, equipage, retinue, etc. with which one is fitted out; also, an institution or place of business with its fixtures and organized staff; as, large establishment, a manufacturing establishment." The dictionary meaning also tends to show that an establishment must have a separate identifiable existence.

13. What is urged on behalf of the Corporation is that after taking over various establishments of various Assurance Companies doing life insurance business the Corporation has not retained those establishments in a separate identifiable form and that the Corporation is not a conglomeration of various units, but is one single unit formed for the purpose of carrying on life insurance business in India and outside India. The employees of the various establishments whose services have been transferred to the Corporation have not to attend exclusively to the business of the particular Unit to which they were attending before such transfer of service. A person who was formerly an employee of one company was liable to be entrusted with the work of a totally different company whose life insurance business has been taken over by the Corporation. A person formerly employed by one Assurance Company may have to attend to the business of various similar companies. So far as the fresh business done by the Corporation is concerned, it cannot be said to be the business of any particular company and all the old employees of various units would have to attend to such business. The establishment run by the Corporation is a unified establishment and the old establishments have not retained their identity. In my view, there has been such a merger of the various establishments that it is not possible to say that any old establishment as such has continued. It is the scheme of the Industrial Disputes Act that any awards or settlements arrived at there under would bind not merely the then

employers, but their successors, and would bind not merely the then employees but future employees too. This binding nature of the settlements and awards continues only so long as it can be said that the establishment continues. With the extinction of the establishment the binding nature of the settlements and awards would cease. In my view, the awards and settlements have ceased to bind the Corporation under Section 18 (c) of the Industrial Disputes Act.

14. But the provisions of Section 18 (c) are not the only provisions which matter in this case. Section 11 of the Life Insurance Corporation Act, 1956, in terms provides that the employees of various companies whose services have been transferred to the Corporation are to hold their offices in the Corporation "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 they would have held the same on the appointed day if that Act had not been passed with the result that the awards and settlements which governed the rights and obligations of the employers and the employees before the appointed day would, on and from the appointed day, be binding on the employees concerned and the Corporation by reason of the statutory provisions contained in Section 11. It is, however, strenuously urged on behalf of the Corporation and the Central Government that under Section 11 (1), an absolute and unfettered overriding power has been conferred upon the Corporation to alter the terms and conditions of service of such employees whose services have been transferred to the Corporation. As already stated, this submission was not made by the Corporation in its first affidavit in reply where it was contended that the Corporation could only alter such terms and conditions of service with the sanction of the Central Government. That, however, does not preclude the Corporation from urging that contention.

15. It is contended by the learned Advocate General that under Section 11 (1) the terms and conditions of service as embodied in the awards and settlements continue to operate until the employment itself is terminated or until the terms and conditions are altered by the Corporation. He says that the expression "duly altered by the Corporation" would have the same meaning even if the word "duly" was not there. He states that by the use of the words "until his remuneration, terms and conditions are duly altered by the Corporation" an express power is conferred upon the Corporation to alter those terms and conditions. The learned Advocate General when asked whether the Corporation had the right to alter the term of a contract entered into between a company, whose life insurance business has been taken over, and its employee relating to the period of employment where the period of employment was for a fixed period, submitted that such a power has been conferred upon the Corporation. His submission in substance amounted to this that notwithstanding anything contained in any contract of service between a previous employer and the employee, notwithstanding the terms and conditions of any award or settlement and notwithstanding the provisions of any other law, the Corporation had the overriding power conferred upon it to alter the terms and conditions of service of the employees whose services have been transferred to it. He stated that the expression "duly altered" meant "duly altered as provided under the Life Insurance Corporation Act, 1956", and that it had no reference to any

other enactment. In considering this argument of the learned Advocate General, it would be useful to refer to the other provisions of Section 11. Under subsection (2) of Section 11, power is given to the Central Government, for the purpose of rationalizing the pay scales of employees of insurers whose controlled business has been transferred to and vested in the Corporation, 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, to alter the terms of service of the employees as to their remuneration in such manner as it thought fit. The powers of the Central Government under Sub-Section (2) of Section 11 are limited. The Central Government is given the power to alter the terms of service of the employees only as to their remuneration. That power has to be exercised only for the two purposes therein mentioned viz., for rationalizing the pay scales, or where the interest of the Corporation and its policy-holders calls for a reduction. Even where such a limited power is conferred on the Central Government, the sub-section starts with the words "notwithstanding anything contained in Sub-Section (1) or in any contract of service." Where the legislature thought fit to confer an overriding power i. e., a power to override any contract of service or any other provisions of a statute, it has done so in express terms. Even where the Central Government exercises such a power, protection is given to the employee by providing that if such an alteration was not acceptable to any employee, the Corporation could terminate his employment, by giving him compensation equivalent to three months' remuneration unless the contract of service with such employee provided for a shorter notice of termination. It is provided by way of explanation that the compensation payable to an employee would be in addition to and would not affect any pension, gratuity, provident fund money or any other benefit to which the employee might be entitled under his contract of service. If the legislature had intended to confer an unfettered power upon the Corporation to alter the terms and conditions of service irrespective of any other law and irrespective of any contract of service, the legislature would have used apt language for that purpose. It would have been stated that the Corporation was given such power notwithstanding anything contained in any other law, or in any award or settlement or in any contract of service. Reading the section as a whole, in my view, no such power was intended to be conferred upon the Corporation. It seems to me that the intention of Section 11 (1) was to provide for continuity of service on the same terms and conditions as those which prevailed at the time when the services of the employees were transferred to the Corporation. The Corporation could only alter the remuneration and the terms and conditions of service in the same manner in which and subject to the same conditions under which the previous companies, whose life insurance business was taken over by the Corporation, could alter the same. It became necessary for the legislature to use in Section 11 the words "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" as otherwise it might have been contended that as the terms and conditions of service had a binding force by virtue of a statute they were not liable to be altered and the services were not liable to be determined. If unbridled power was sought to be conferred upon the corporation to alter the remuneration and other terms and conditions of service, it would have been reasonable to expect some safeguard similar to the one provided under Sub-Section (2) of Section 11 where if the alteration was not

acceptable to any employee, his services could be terminated by the Corporation on payment of compensation. I hold that no such overriding power has been conferred upon the Corporation. The Corporation had no power to alter the terms and conditions of service by the Summary dated 10-9-1956, being Ex. F to the petition, or to issue the instructions set out in Ex, G to the petition.

16. As regards the approval of the Central Government sought by the letter of the Corporation dated 22-12-1956 and granted by the letter of the Government dated 24-12-1956 it seems that the approval of the Central Government was sought and obtained under some misapprehension about the provisions contained in Section 11 of the Act. There is no provision therein contained for any such approval by the Central Government. It was contended by the learned Advocate General that as the Central Government has accorded its approval to the Summary of pay scales and other conditions of service applicable to supervisory, clerical and subordinate staff, it should be deemed to have acted under Section 11 (2). The power to approve what somebody else has done is something different from the power of doing something by oneself. In both, no doubt, the mind of the authority is applied to the matter, but the two acts are different. The act contemplated by Section 11 (2) is not the act of according approval to something done by the Corporation. The overriding powers conferred upon the Central Government have to be exercised for the purposes mentioned in Section 11 (2), and the Central Government could not be deemed to have exercised its powers under Section 11 (2) when merely conveying its approval to the act already done by the Corporation in issuing the Summary. There is, however, another objection to what is contained in the letter dated 24-12-1956. Under Section 11 (2) the Central Government is empowered to alter only the terms of service of the employees as to remuneration and not any other terms. When one turns to the Summary, one finds that it deals with not merely the terms of service relating to remuneration, but among others with other conditions of service relating to the working hours, leave retirement etc. Under the heading "Fitting in of present employees", the Summary refers, among other things, to increments being governed by staff regulations under Clause 11. It is common ground that no such Regulations were promulgated when the Summary was issued. The terms and conditions of service appearing in the Summary are not confined to remuneration. The learned Advocate General contends that the terms of service as regards remuneration are so inter-related with the other terms and conditions of service that the power to alter the terms as regards remuneration would by necessary implication involve the power to alter the other terms and conditions of service. The learned Advocate General drew my attention to a passage from Halsbury's Laws of England, 2nd Edition Vol. 31st page 501 where it has been stated as under:

"A duty imposed or a power granted by Parliament carries with it the power necessary for its performance or execution. Similarly, an authority given by statute to do certain work authorizes the doing not only of all things absolutely necessary for its execution, but of all things reasonably necessary. This is especially the case with enabling Acts."

I do not think the passage cited by the learned Advocate General helps the contention sought to

he advanced by him. If the learned Advocate General's contention is right, by Sub-Section 2 of Section 11 the Central Government is given the power to alter all the terms and conditions of service. I do not think that contention is correct. The legislature has thought fit only to confine the overriding powers of the Central Government to alter the terms of service of the employees only as to remuneration. The object is to rationalize the pay scales and in certain cases to reduce the remuneration where in the interest of the Corporation and the policy-holders a reduction is called for. It has no reference to the other terms and conditions of service. In my view, the Central Government has no power to alter the other terms and conditions of service. It is then urged that the terms and conditions contained in the Summary are severable, and to the extent that they refer to the terms and conditions as regards remuneration, effect should be given to them. The terms and conditions of service as set out in the Summary are, in my view, not capable of being severed. Each one of the terms contained therein is intended to constitute a term of service, and the remuneration payable is the consideration for serving on all the other terms and conditions of service therein provided. They are so inter-related that it is not possible to sever the one from the other. It cannot be said that either the Corporation or the Central Government intended that effect should be given to the terms therein contained relating to remuneration without giving effect to the other terms and conditions therein mentioned. In my view, the letter dated 24-12-1956 and the action referred to therein are not warranted by any of the provisions of Section 11 (2) and are bad in law.

17. Coming to the letter dated 21-2-1957, it has been urged by Mr. Buch that this letter is merely a communication by the Joint Secretary to the Government of India and does not amount to any action taken under Section 11 (2). I do not agree with this contention. The letter itself states as under:

"and the Central Government hereby lays down and prescribes the terms of the said new pay scales and service conditions for employee of the Corporation in the supervisory, clerical and subordinate grades as from the 1st day of September 1956." There are, however, other objections to the action of the Central Government. The new pay scales and services conditions referred to therein are the very same pay scales and service conditions as those referred to in the aforesaid letter of Government, dated 24-12-1956. They deal with the terms and conditions of service relating to remuneration as well as other terms and conditions of service. The Central Government has no power to alter the other terms and conditions of service as I have already indicated above. I have already held that the other terms and conditions of service are not severable from the terms and conditions of service as regards remuneration. The action purported to have been taken by the Central Government in issuing the said letter dated 21-2-1957 is bad in law and is liable to be set aside. The Central Government has further purported to give effect to those terms and conditions as from 1-9-1956 which it has no power to do.

18. In my view, the petitioners are entitled to the reliefs claimed by them in prayers (a) and (b) of

the petition and I order accordingly. They are also entitled to the relief claimed in prayer (a1) to be operative until such time as the employment of the petitioners is terminated by the Corporation or the terms and conditions of service are duly altered in accordance with law and I order accordingly. The Rule issued herein is made absolute. The respondent to pay to the petitioners the costs of the petition. Costs fixed at Us. 1000/-.

Rule made absolute.