

Naranjan Das
Kapur
v.
P. M. Dalal
and another

Pandit, J.

In view of this finding, there is no necessity of discussing the other preliminary objection raised by the learned counsel for the respondents.

In the result, this petition is dismissed. In the circumstances of this case, however, the parties are left to bear their own costs in these proceedings.

J. S. BEDI, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before J. S. Bedi and Prem Chand Pandit, JJ.

TEK CHAND MITAL,—*Petitioner*

versus

THE ZONAL MANAGER IN-CHARGE OF NORTHERN
ZONAL OFFICE LIFE INSURANCE CORPORATION OF
INDIA AND ANOTHER, *Respondents.*

Civil Writ No. 198-D of 1959.

1962

September, 24th.

Life Insurance Corporation Act (XXXI of 1956)—Ss. 11 and 49—Life Insurance Corporation—Whether competent to make regulations concerning the terms and conditions of service of old employees pending categorisation by Central Government—Life Insurance Corporation of India (Staff) Regulations, 1956—Whether applicable to old employees—Regulation 42—Appeal under—Whether equally efficacious alternative remedy.

Held, that the Life Insurance Corporation is competent to frame Regulations regarding the remuneration and terms and conditions of service of the employees of the various Insurance Companies whose life insurance business was taken over by the Corporation under the Life Insurance Corporation Act, 1956, by virtue of the provisions of section 11(1) read with section 49(1) and (2)(b) of the Act. In sub-section (1) of section 11, there is no bar in the way of the Corporation to make Regulations for such employees pending their categorisation by the Central Government under sub-section (2) of this section.

Held, that the Life Insurance Corporation of India (Staff) Regulations, 1956 apply to both the old employees as also the newly recruited ones and under Regulation 42 an old employee can file an appeal against the order terminating his services to the Board mentioned in Regulation 43 and this appeal is an equally efficacious remedy which, if not availed of, will disentitle the petitioner to seek the remedy under Article 226 of the Constitution.

Petition under Article 226 of the Constitution of India praying that the Hon'ble Court may be pleased to issue a writ, order or direction against the Respondent to the effect that the letter Annexure 'L' is illegal, void and ineffective on the petitioner's interests and declaring that the petitioner is still in the service of the Life Insurance Corporation as a Supervisory officer on the same remuneration and the same terms and conditions which applied to the petitioner on the appointed day, namely, 1st September, 1956 or in the alternative declaring that the petitioner is a duly categorised Field Officer in the grade of salary and allowances described in Annexure 'P'.

MANMOHAN NATH, ADVOCATE, for the Petitioner.

BHAGWAT DAYAL, YOGESHWAR DAYAL and RAJINDAR SACHAR ADVOCATES, for the Respondent.

JUDGMENT

PANDIT, J.—On 15th November, 1954, Tek Chand, petitioner, was employed as an Inspector at Delhi by the United India Life Assurance Company, Limited. On 12th May, 1955, he was confirmed as an Organising Secretary in the said Company with effect from 1st April, 1955, on a fixed basic salary of Rs. 400 plus Rs. 365 as allowances per month. On 15th June, 1956 his remuneration was fixed at Rs. 400 as basic salary and Rs. 265 as allowances per month with effect from 1st April, 1956. The entire life insurance business carried on in India by numerous Insurance Companies was nationalised and taken over by the Central Government under the provisions of the Life Insurance Ordinance No. 1 of 1956, with effect from 19th January, 1956. Subsequently, this

Pandit, J.

Tek Chand
Mital
v.
The Zonal
Manager
In-charge of
Northern Zonal
Office
Life Insurance
Corporation of
India and
another

Pandit, J.

Ordinance was replaced by the Life Insurance Corporation Act 31 of 1956 (hereinafter referred to as the Act), according to which the Life Insurance Corporation of India was set up and it took over the entire life insurance business with effect from 1st September, 1956. On 6th September, 1956, the petitioner received a letter from the Divisional Manager, Delhi Division Office, Life Insurance Corporation of India, respondent No. 2, intimating that he had been posted in the Branch Office of the Life Insurance Corporation at Connaught Circus, New Delhi. On 2nd December, 1957, the Managing Director of the Life Insurance Corporation issued two circulars entitled (1) Categorisation or fitting in of existing salaried field workers; (Revised), (Annexure 'E') and (2) Terms and conditions of service of salaried field workers (Revised) (Annexure 'F'). On 30th December, 1957, the Central Government acting under section 11(2) of the Act passed an order called the Life Insurance Corporation Field Officers (Alteration of Remuneration and Other Terms and Conditions of Service) Order, 1957 (Annexure 'G'), providing for the terms and conditions of service of the Field Officers of the Corporation. On 10th January, 1958, the Branch Manager, wrote to the petitioner that under para 11 of the Order (Annexure 'G'), the Corporation was to lay down regulations with regard to the determination of actual pay and allowances of all the Field Officers and the circulars (Annexures 'E' and 'F') dated 2nd December, 1957, be treated as such regulations. On 29th April, 1958, the Divisional Manager, intimated the petitioner that in accordance with para 4(f) of Annexure 'E' his work had been reviewed and in consequence thereof his remuneration had been fixed on *ad hoc* basis at Rs. 310 as basic salary and Rs. 275 as allowance per mensem (Annexure 'I'). By means of a letter dated

22nd May, 1958, the Managing Director informed the petitioner that a Special Committee had been appointed under clause 5 of annexure 'E' to examine and review the cases of the Ex-Branch Secretaries and Ex-Supervisory Officers, who were required to work as Field Officers. On 5th November, 1958, however, the Senior Divisional Manager, wrote to the petitioner that his case did not fall within the purview of the said Committee and as such he should continue to work as a Field Officer. Later on 27th November, 1958, the Zonal Manager, respondent No. 1, informed the petitioner that his performance during the categorisation period being less than 50 per cent, his case was referred to the Zonal Committee, under para 4(h) of Annexure 'E'. The Zonal Committee had gone through his case and in their opinion he was not fit to be absorbed in the Administration side and his appointment, therefore, was terminated with effect from 1st December, 1958 (Annexure 'L'). The present writ petition was filed on 3rd April, 1959, and the relevant claim made therein is as follows:—

Tek Chand
Mital
v.
The Zonal
Manager
In-charge of
Northern Zonal
Office
Life Insurance
Corporation of
India and
another

Pandit, J.

"It is, therefore, prayed that the Hon'ble Court may be pleased to issue a writ, order or direction against the respondents to the effect that the letter, Annexure 'L' dated 27th November, 1958, issued by respondent No. 1, terminating the petitioner's services is illegal void and ineffective on the petitioner's interests and declaring that the petitioner is still in the service of the Life Insurance Corporation as a Supervisory Officer on the same remuneration and the same terms and conditions which applied to the petitioner on the appointed day, namely, 1st September, 1956, or in the alternative declaring that the petitioner is a duly categorised Field

Tek Chand
Mital
v.
The Zonal
Manager
In-charge of
Northern Zonal
Office
Life Insurance
Corporation of
India and
another

Pandit. J.

Officer in the grade of salary and allowances described in Annexure 'I'".

This writ petition came up for hearing before Grover, J., who by his order dated 19th October, 1959, referred it to a Division Bench in view of the fact that important law points were involved therein and that is how this case has come up before us.

It may be mentioned that before the learned Single Judge, an objection was raised by the respondents, that the prayer in the writ petition to the effect that the petitioner should be declared to be still in the service of the Life Insurance Corporation as a supervisory officer on the same remuneration and the same terms and conditions which applied to the petitioner on the appointed day, namely, 1st September, 1956, could not be entertained by this Court as it was the Head Office of the Corporation situated in Bombay, which had decided that the petitioner was a Field Officer and not a Supervisory Officer and, consequently, this order of the Head Office could only be challenged before the Bombay High Court and not before this Court. On this objection having been raised, the learned counsel for the petitioner agreed to abandon this prayer and confined his relief to the remaining prayer made in the writ petition.

Learned Counsel for the respondents raised a number of preliminary objections:—

- (1) that the petitioner had an alternative remedy by way of an appeal under the regulations framed by the Corporation and since he had not exhausted this remedy before coming to this Court, his writ petition should be dismissed;

- (2) that the petitioner should have filed a suit, where he should take up all the points raised in this writ petition;
- (3) that the petitioner is guilty of laches, having filed the petition more than four months after the impugned order;
- (4) that the petitioner is not a Government servant to whom protection is given by Article 311 of the Constitution. As such the order terminating his services cannot be challenged by a writ petition; and
- (5) since the relief that the petitioner has claimed in the writ petition cannot be granted to him by a civil Court, the same cannot be given to him by means of this petition.

Tek Chand
Mital
v.
The Zonal
Manager
In-charge of
Northern Zonal
Office
Life Insurance
Corporation of
India and
another

Pandit, J.

With regard to the first preliminary objection, learned counsel for the respondents stated that the Corporation had, with the previous approval of the Central Government, framed Regulations under section 49(2) (b) of the Act and in Regulation No. 42, it was mentioned that an employee had a right to appeal against any order passed by a superior authority, which injuriously affected his interests. The authorities, to whom appeals lay, had been mentioned in Regulation No. 43. On the basis of these Regulations, it was contended that the petitioner should have filed an appeal to the Board against the order terminating his services. Learned counsel for the petitioner, on the other hand, submitted that these Regulations did not apply to his client, who was a whole-time employee of the United India Life Insurance Company Limited, whose entire life insurance business was taken over by the Corporation under the Act. His submission was that these Regulations applied only to those persons who were recruited after the coming

Tek Chand
Mital
v.
The Zonal
Manager
In-charge of
Northern Zonal
Office
Life Insurance
Corporation of
India and
another

Pandit, J.

into force of the Act. He also contended that pending categorisation by the Central Government under section 11(2) of the Act, the Corporation could not frame any regulations governing the employees of the various Insurance Companies.

In order to determine this question, it will be necessary to examine the provisions of sections 11 and 49 of the Act, the relevant portions of which are given below:—

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

* * *

(2) Where the Central Government is satisfied that for the purpose of securing uniformity in the scales of remuneration and the other terms and conditions of service applicable to employees of insurers whose controlled business has

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

Tek Chand
Mital
v.
The Zonal
Manager
In-charge of
Northern Zonal
Office
Life Insurance
Corporation of
India and
another

Pandit, J.

S. 49. (1) The Corporation may with the previous approval of the Central Government, by notification in the Gazette of India, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of this Act.

“(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

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Tek Chand
Mital
v.
The Zonal
Manager
In-charge of
Northern Zonal
Office
Life Insurance
Corporation of
India and
another

(b) the method of recruitment of employees and agents of the Corporation and the terms and conditions of service of such employees or agents;

(bb) the terms and conditions of service of persons who have become employees of the Corporation under sub-section (1) of section 11;

Pandit, J.

* * *

A perusal of these provisions would show that the Corporation is authorised to make regulations, not inconsistent with the Act and the rules made thereunder, with the previous approval of the Central Government by notification in the Gazette of India. These regulations can be made providing for,

- (1) the method of recruitment of employees and agent of the Corporation and the terms and conditions of service of these employees; and
- (2) the terms and conditions of service of persons who have become employees of the Corporation under sub-section (1) of section 11.

Subsection (2) of section 11 authorises the Central Government to alter the remuneration and the other terms and conditions of service of all the employees of the Corporation to such an extent and in such a manner as it thinks fit only under two contingencies—when it is satisfied that (a) 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 business had been transferred to and vested in the Corporation, it is necessary to do so and (b) 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. This can be done notwithstanding anything contained in sub-section (1) of section 11, 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. In the present case, the Regulations, which are called the "Life Insurance Corporation of India (Staff) Regulations, 1956", were framed by the Corporation in exercise of the powers vested in it under clause (b) of sub-section (2) of section 49 of the Act, of course, with the previous approval of the Central Government. These Regulations were framed to define the terms and conditions of service of the staff of the Life Insurance Corporation of India. It may be mentioned that when these Regulations were made by the Corporation, clause (bb) of sub-section (2) of section 49 was not there, since it was inserted by Act 17 of 1957, though with retrospective effect. The point for decision is whether these Regulations also apply to the employees of the various Insurance Companies whose life insurance business was taken over by the Corporation under the Act. The contention of the learned counsel for the petitioner is that the Corporation was only authorised to frame Regulations regarding the terms and conditions of service of new employees, that is, those who were recruited after the coming into force of this Act and not to the old employees, that is, those who had become employees of the Corporation under sub-section (1) of section 11 of the Act, and for this submission he relies on the language used in clause (b) of sub-section (2) of section 49 of the Act. Sub-section (1) of section 11, however, makes it quite clear that the remuneration, terms and conditions of service of the old employees can be altered by the Corporation. To

Tek Chand
Mital
v.
The Zonal
Manager
In-charge of
Northern Zonal
Office
Life Insurance
Corporation of
India and
another

Pandit, J.

Tek Chand
Mital
v.
The Zonal
Manager
In-charge of
Northern Zonal
Office
Life Insurance
Corporation of
India and
another

Pandit, J.

what extent it can alter, is a different matter. But the fact remains that the Corporation is fully empowered to alter the terms and conditions and the remuneration of the old employees. This section, when read with section 49(2)(b) makes it clear that the intention of the Legislature was to authorise the Corporation to frame Regulations with regard to the terms and conditions of all the employees, whether old or new, to carry out the purposes of the Act. To remove all doubts on this point, clause (bb) was inserted by the Amending Act 17 of 1957 with retrospective effect. Further, a reading of the Regulations themselves would show that the Corporation was framing them for all the whole-time employees whether recruited or transferred, that is, new or old ones. Reference in this connection may be, specially, made to Regulation 2 and Explanation to Regulation 14(1), which are as follows:—

*“Regulation 2.—*They shall apply to every whole-time employee of the Corporation including salaried field staff except where otherwise provided.

Regulation 14. (1) Except as otherwise provided by or under these Regulations, ‘service’ of an employee shall be deemed to commence from the working day on which an employee reports for duty in an appointment covered by these Regulations at the place and time intimated to him by the appointing officer, provided that he reports before noon, otherwise his service shall commence from the next following working day.

*Explanation.—*In the case of an employee transferred to the service of the Life Insurance Corporation from the service

of Insurers, his 'service' shall be deemed to commence from the date on which his service commenced under his former employer.

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Besides, Regulation 42 clearly states that an employee shall have a right to appeal against any order passed by a superior authority, which injuriously affects his interests. The word 'an employee' used in this Regulation shows that the right of appeal was made available to all the employees without any distinction of old and new ones. From the above discussion, it is quite clear that these Regulations were meant for both the old employees as also the newly recruited ones. In this view of mine, I am supported by a Bench decision of the Allahabad High Court in *Kedar Nath Sethi v. Life Insurance Corporation of India and another* (1). That being so, the petitioner, who was, admittedly, an old employee was governed by these Regulations and he could file an appeal against the order terminating his services under Regulation 42 to the Board, mentioned in Regulation No. 43.

As regards the contention of the learned counsel for the petitioner that pending categorisation by the Central Government, the Corporation could not frame any Regulations governing the old employees, I have already held above, that the Corporation itself is competent to frame Regulations regarding these employees by virtue of the provisions of section 11(1) read with section 49(1) and (2)(b) of the Act, though to a certain extent, with which we are not concerned in the present petition, because it is not the case of the petitioner that any particular Regulation in these Staff

Tek Chand
Mital
v.
The Zonal
Manager
In-charge of
Northern Zonal
Office
Life Insurance
Corporation of
India and
another

Pandit, J.

(1) A.I.R. 1961 All. 606.

Tek Chand
Mital
v.
The Zonal
Manager
In-charge of
Northern Zonal
Office
Life Insurance
Corporation of
India and
another

Pandit, J.

Regulations is void or beyond the powers of the Corporation. In sub-section (1) of section 11, there is no bar in the way of the Corporation to make Regulations for such employees pending their categorisation by the Central Government under sub-section (2) of this section.

I would, therefore, hold that the petitioner had a right to file an appeal against the impugned order. In view of the fact that when the petitioner has not availed of an equally efficacious remedy which was available to him under the law, decline to exercise my discretionary powers under Article 226 of the Constitution in this case. This writ petition is liable to be dismissed on this ground alone.

In view of the above finding, it is needless to go into the other matters raised by the learned counsel for the respondents.

The result is that this petition fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs in these proceedings.

Bedi, J.

J. S. BEDI, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Mehar Singh and Shamsher Bahadur, JJ.

BALKISHAN DASS,—Appellant

versus

PARMESHRI DASS AND OTHERS,—Respondents.

Regular First Appeal No. 43 of 1955.

1962
October, 1st.

*Code of Civil Procedure (Act V of 1908)—S. 11—Res
Judicata—Interlocutory order heard on merits in appeal or*