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Travails of Employees Recruited by LIC on Contractual Basis-Securing the fruits of justice.

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A CASE STUDY OF THE APPOINTMENTS MADE BY LIC TO CLASS III AND CLASS IV POSTS - UNEXPECTED LEGAL CONSEQUENCES, CHALLENGES AND RESULTANT LITIGATION:

ABSTRACT:

This paper is an attempt to study the issue of appointment of employees on a contractual basis, later their termination, claims for absorption and the consequent litigation that has emanated therefrom. The Litigation as is familiar in the Indian context has moved through several phases, Legal fora at times with expected consequences and at times with unanticipated consequences. The genesis of the present situation faced by the Behemoth Life Insurance Corporation of India and the aspirants who secured a Supreme Court judgment in their favor can be traced to the period of the Early 1980s and late 1990s when LIC made appointments on a contractual basis for a limited number of days to Class III and Class IV Posts and thereafter terminated them in accordance with the contractual provisions governing their appointment. The issues basically revolve around the employment rights of Class III and Class IV employees appointed for a shorter duration. The present status of the Litigation along with a few lessons that can be learned for the future are made.

KEYWORDS: ABSORPTION, AWARD, UNFAIR LABOUR PRACTICE, INDUSTRIAL DISPUTE.

About Life Insurance Corporation of India: Life Insurance Corporation of India is a statutory corporation set up under an Act of Parliament.¹ The business functions and all other aspects of the governance of the Life Insurance Corporation of India are governed by the Life Insurance Corporation of India Act 1956. The Life Insurance Corporation of India in terms of the Act also has provisions for framing various rules and regulations in respect of its operations and

¹ indiafilings, <https://www.indiafilings.com/learn/companies-appointment-and-qualification-of-directors-fifth-amendment-rules-2020/>, (last visited Feb. 6, 2024).

other activities. The rule-making power of the Life Insurance Corporation of India is derived from Section 49 of The Life Insurance Corporation of India Act 1956.²³ (hereinafter referred to as LIC) LIC has framed regulations for the recruitment of its personnel.⁴ The recruitment of employees is carried out in accordance with the provisions of these regulations. A cursory look at the important provisions relating to recruitment will be helpful in understanding the legal effect of the recruitment and the position of the persons so appointed in accordance with the regulations. Life Insurance Corporation of India (STAFF) Rules 1960 Rule 5: Classification of Appointments.⁵

Class I: Officers

Class II: Development Officers

Class III: Supervisory and clerical staff Class IV: Subordinate Staff:⁶

Rule 8: (1) Notwithstanding anything contained in these rules, a managing director, executive director within bracket personnel, a general manager, or a divisional manager may employ staff in classes III and IV on a temporary basis subject to such general or special directions as may be issued by the chief executive from time to time.⁷ (2) No person appointed under sub-rule one shall only by reason of such appointment be entitled to absorption in the service of the corporation or claim preference for recruitment to any post. In terms of these regulations, LIC had made some appointments during the early 80s and 90s. The employees were appointed on a contractual basis for a fixed period to Class III and Class IV Posts.⁸ The Appointment letter issued to the candidates had explicitly stated that their appointment was on a contractual basis and their appointment was on a temporary basis. The other terms and conditions of employment were specified in the said letter were customary to such appointments. The employees appointed performed the duties assigned to them in terms of the contract and on expiry of the period stipulated in their contract, their services were terminated. It is pertinent to observe here

² The Life Insurance Corporation of India Act 1956, 45, No. 31, Acts of Parliament, 1956 (India).

³ mbaknol, <https://www.mbaknol.com/legal-framework/functions-of-life-insurance-corporation-of-indialic/>, (last visited Feb. 6, 2024).

⁴ dailytools, <https://dailytools.in/InsuranceKnowledge/LICAct>, (last visited Feb. 6, 2024).

⁵ dopt.gov.in, <https://dopt.gov.in/sites/default/files/Rule-03.pdf>, (last visited Feb. 6, 2024)

⁶ Life Insurance Corporation of India (Staff) Rules, 1960, Acts of Parliament, 1960 (India).

⁷ Ranbir Singh Versus SK Roy, Chairman, Life Insurance Corp. of India & Anr.

⁸ *Id.*, at 1212.

that LIC had repeated this method of appointment on a few occasions and dealt with the employees appointed on a contractual basis in a similar way it had done in the past. It is also to be noted that these contractual employees had no connection whatsoever with the regular employees appointed by LIC.

Genesis of the Dispute:

First Phase: An Industrial Dispute was raised by the Western Zonal Insurance Employees Association in 1982 alleging that LIC had been indulging in unfair Labour practices by appointing employees on a temporary basis and was depriving them of the claims for permanent posting.⁹ The Central government had referred the matter to the Industrial Tribunal on 20th May 1985 for adjudication. The reference made to the Tribunal was in the following terms. “What should be the wages and other conditions of service of badli, temporary and part-time workmen of life insurance corporation of India as well as the conditions of their absorption two regular cadres?” In the above proceedings, an interim order was passed by the tribunal restraining LIC from recruiting regular employees and from terminating the services of the ad hoc workers working with LIC.¹⁰ The Tribunal passed an award on 18th April 1986 stipulating that those ad hoc workers who worked between 1st January 1982 and 20th May 1985 will be entitled to absorption. The award inter alia stipulated that Workers claiming absorption in class III posts should have worked for 85 days in a period of two years and Workers in class IV posts should have worked for 70 days in a period of three years. This award passed by Justice Tulpule is known as the J.Tulpule Award.¹¹¹²

LIC issued circulars in June 1987 for implementing the above award. However, these circulars issued by LIC were disputed by the unions and associations of the workers. Following this dispute over the LIC circulars, the central government referred the Tulpule award for interpretation under section 36-A of the Industrial Disputes Act 1947 to the National Industrial Tribunal presided over by Justice M S. Jamdar a former judge of the Bombay High Court. The terms of reference were as under Can they award dated 17th April 1986, with special reference

⁹ *Id*, at 1213.

¹⁰ *Id*, at 1213.

¹¹ *Id*, at 1213.

¹² advocatemmohan, LAW FOR ALL, freelegalconsultancy, (Feb. 01, 2024, 4:19 PM), <https://freelegalconsultancy.blogspot.com/2015/03/item-no10-of-schedule-v-of-act-in.html>

to paragraphs 44,45,46,48,49,51,52,54,56,57,60, 64, and 66 and the interim order dated 14th March 1986 be interpreted to mean that the central office of the LIC is empowered to issue instructions/guidelines as contained in their circulars issued in this behalf to implement the directions of the award.¹³ If not, what could be the correct interpretation of various directions covered by the said paragraphs in the circumstances of the case? Whether the term absorption referred to at various places in the award can be interpreted to mean recruitment.¹⁴ The Tribunal passed an award stating that absorption contemplated in the Justice Tulpule Award did not imply recruitment. LIC challenged the above interpretation by filing a petition under Article 136 of the constitution of India. A compromise was arrived at between LIC and all the unions representing the workers except one union.¹⁵ The terms of the compromise envisaged that the Jamdar and Tulpule awards should be substituted by the terms and conditions of the compromise in relation to the question of regular employment of the workmen concerned in the said references the terms of the compromise.¹⁶ The compromise stems culminated in an interim order passed by the Supreme Court on 1st March 1989. The order is to the following effect.

It appears that out of nine unions, 8 unions said to be representing about 99% of the workers have entered into a compromise with the management. In these circumstances pending the final disposal of the appeal we permit the management of LIC and the members of the 8 unions to implement the terms of compromise by way of interim measure without however any prejudice to the rights and contention of the members of the other union who have not entered into such compromise with the management.¹⁷ The interim order passed above was confirmed by the Honourable Supreme Court on 7th February 1986. In terms of this compromise LIC had appointed 1875 persons to Class III and 1324 persons to Class IV Posts. The First phase of the Litigation concluded with the appointments made by LIC as stated above.¹⁸

Second Phase:

The second phase of the claims for regularisation relates to the period of those workers who

¹³ Ranbir Singh, *Supra* note 07, at 1214.

¹⁴ Ranbir Singh, *Supra* note 07, at 1214.

¹⁵ Ranbir Singh, *Supra* note 07, at 1214.

¹⁶ Ranbir Singh, *Supra* note 07, at 1214.

¹⁷ Ranbir Singh, *Supra* note 07, at 1214.

¹⁸ Ranbir Singh Versus SK Roy, Chairman, Life Insurance Corp. of India & Anr.

worked between 20th May 1985 and 4th March 1991. The reference to the Industrial Tribunal for adjudication was as follows. ‘Whether the action of the management of LIC in not absorbing badli/ temporary and part-time workmen employed in the establishment of LIC

Award of the Tribunal: Justice K S Srivatsav passed the award on 18th June 2001, which is as under.¹⁹ “In view of the fact that I’m of the definite view that such type of Workman belonging to temporary/badli/ part-time categories in class III and class IV service of the corporation who were employed after following the procedure and were allowed to continue service beyond the qualifying period and were eligible and suitable to every respect should be given absorption in the service from the date of vacancy in the service from which they could have been absorbed. It will also apply to these employees whose services were terminated by the corporation. At this stage, it is necessary to refer to two important decisions involving LIC of India.²⁰

E. Prabhavati Vs Life Insurance Corporation of India²¹: The prelude to the proceedings in the Supreme Court lay in the fact that a writ petition demanding absorption of temporary employees who worked between 20th May 1985 to April 1991 was filed before the Madras High Court. The said writ petition was dismissed by the Chennai High Court. Aggrieved by the dismissal of the writ petition, a special leave petition was filed before the Supreme Court. The SC in 1992 had passed directions directing LIC to formulate a scheme for the regularisation of employees who were appointed on a contractual basis during the relevant period.²²

In Life Insurance Corporation of India Vs Sudhakar²³: The SC of India had passed similar directions for formulating a scheme for regularisation. These proceedings arose out of an appeal preferred against the orders of the Andhra Pradesh High Court. Both these judgments of the Supreme Court did not direct absorption but only directed the formulation of the scheme for regularisation. It can be observed that the award passed by Justice K Srivatsva on 18th

¹⁹ Ranbir Singh, *Supra* note 07, at 1215.

²⁰ Ranbir Singh, *Supra* note 07, at 1215.

²¹ Civil Appeal No (Arising out Of SLP No 10392- 10413 of 92 dated 23rd October 1992

²² The District Collector Collectorate, Rajaji Salai Chennai-600 001. vs 1.Mr.R.Vetr, 2.N.Sivaraman Rep.by their Power of Attorney Agent Mr.K.M.Syed Khalifa, 3.The Corporation of Chennai Rep.by its Commissioner Ripon Buildings, Chennai 600 003

²³ Civil Appeal No.2104 of 2000 SCI dated 22nd November 2001

June 2001 is on similar lines to the earlier awards. LIC challenged the above award by filing a writ petition before the Delhi High Court. The Delhi High Court in its orders held that the award was bound to take into effect in the judgments rendered in E Prabhavati versus Life Insurance Corporation of India and Life Insurance Corporation of India versus G Sudhakar where LIC was directed to formulate a scheme for regularization and the said directions given are binding on the Industrial Tribunal.²⁴ As the same was not considered by the CGIT, the Delhi High Court hence set aside the award.

The Unions challenged the above order of the Delhi High Court by way of an Appeal. The Appeal was dismissed by the Delhi High Court. However, the High Court had directed that an opportunity be given to the appellants whenever an advertisement is issued by LIC for filling up the vacancies of class III and class IV, age relaxation be given, and also due weightage be given to the past services rendered by the Appellants. LIC acting on the above orders had issued an advertisement for filling up the vacancies of Assistants by giving the age relaxation and weightage for past services rendered. However, the above process was followed by an interim order dated 11th February 2008 of the Supreme Court in the Civil Appeal filed by the Unions challenging the decision of the Delhi High Court.²⁵ The Supreme Court in its final orders on 18th March 2015 had set aside the orders of the Delhi High Court and confirmed the award given by Justice K S Srivastava. The SC directed LIC to implement the award. Para 29 of the Judgement is reproduced below. It is needless to mention that since we are of the view that the Award passed by the CGIT in I.D. No. 27 of 1991 is legal and valid, it shall be restored and implemented by the Corporation by absorbing the concerned workmen in the permanent posts and if they have attained the age of superannuation, the Corporation will be liable to pay all consequential benefits including monetary benefits taking into consideration the pay scale and revised pay scale from time to time by the Corporation. In short, the SC of India vide its order

²⁴ Dr. K. Shivaram, Senior Advocate & Mr. Shashi Bekal, Advocate, THE NEW REGIME OF REASSESSMENT PROCEEDINGS UNDER SECTION 148A OF THE INCOME-TAX ACT, 1961: A 20-POINT CHECKLIST FOR REPRESENTATION, itatonline, (Feb. 01, 2024, 4:19 PM), <https://itatonline.org/digest/articles/the-new-regime-of-reassessment-proceedings-under-section-148a-of-the-income-tax-act-1961-a-20-point-checklist-for-representation/>

²⁵ scconline, <https://www.scconline.com/blog/post/2023/04/06/suits-should-not-be-dismissed-on-technical-grounds-delhi-high-court-on-basic-principle-of-law-legal-news-legal-research-updates/>, (last visited Feb. 6, 2024).

dated 18th March 2015 had accepted the claims for absorption of the badli temporary and part time who worked between May 1985 and March 1991.²⁶²⁷

Steps taken for implementation of the Court order dated 18th March 2015:

LIC issued an advertisement on 21 July 2015 calling for applications from workers who were employed as badli/temporary/part-time workers in its establishment from 20 May 1985 to 4 March 1991, in terms of the eligibility criteria determined by the award. This led to the institution of contempt proceedings before this Court on the ground that by restricting the eligibility for recruitment to workers who were engaged between 20 May 1985 and 4 March 1991, LIC was in breach of the directions of this Court in TN Terminated Employees Association. LIC also instituted review petitions against the judgment in the TN Terminated Employees Association.²⁸ The position that followed the above steps would have dampened the spirits of the Unions and the terminated employees who would have celebrated this Judgement of the Supreme Court for it had provided all that has been fought for several years in Courts. It has given me hope and reason to believe that the matters have been put to rest by the SC and the controversy has come to an end. However, the joy and happiness of the Unions and the terminated employees were not to last for too long. The complexities and challenges increased enormously after the above judgment was delivered by the Apex Court. Both the parties to the Litigation i.e. LIC on one side and the terminated employees seeking absorption were engaged in filing a multiplicity of petitions some of them in the form of contempt and the petitions filed by LIC were curative and review petitions in nature.

As a result of the above, the SC had to once again step in and decide the issues that came to the fore. LIC, on the one hand, had strong objections to the number of claims that were preferred, and the Unions and Associations were insisting that the absorption could not be confined and limited to the period up to 1991 but must consider the date of the judgment. Modified to Absorption and 50% of the Back wages: Review petitions were finally decided by the Supreme Court on 22nd February 2017 giving a partial relief to LIC. The relief that was directed to be provided in the Review orders was to the effect that instead of 100% back wages LIC was directed to pay 50% of the back wages. However, the Litigation did not abate there. The Unions

²⁶ Ranbir Singh, *Supra* note 07, at 1217.

²⁷ advocatemmohan, *Supra* note 12, at 1217.

²⁸ Ranbir Singh, *Supra* note 07, at 1217.

were agitated with the reduced amount of back wages and the LIC of India had urged upon the Supreme Court to consider a few fresh grounds. Finally, the Supreme Court of India had to invoke its powers under Article 142 of the Constitution of India to decide the long pending issue of absorption. The Supreme Court of India was conscious of the earlier interim orders restricting LIC from proceeding with further recruitments and having regard to the time-tested principles of equality of opportunity in matters of Appointments by public corporations and stated that it had to balance the competing interests.

At para 74 of the Judgement of the above order the SC had observed that:

A public employer such as LIC cannot be directed to carry out a mass absorption of over 11,000 workers on such flawed premises without following a recruitment process that is consistent with the principles of equality of opportunity governed by Articles 14 and 16 of the Constitution. Such an absorption would provide the very back-door entry, which negates the principle of equal opportunity and fairness in public employment, which has been specifically decried by this Court in *Secretary, State of Karnataka v. Umadevi*.²⁹³⁰

A study of the Two Supreme Court orders one on 18th March 2015 and one on 29th April 2022:

A study of the two court orders passed by the Honourable Supreme Court of India would reveal a few important aspects. The approach, the orientation, the need for doing justice to the parties involved in the Litigation, and not the least the principles of constitutional fairness played their part in the final determination made by the Supreme Court. The SC in 2015 was primarily concerned with the issues of unfair practices, claims for absorption, interpretation of awards, multiplicity of orders passed by the High Courts, etc. Hence the Order of March finally decided the issues of claim for absorption. Whereas the orders of the Court in April 2022 show that the issues of contempt, and difficulties arising in the implementation of the awards weighed heavily with the court. The SC was primarily and justifiably concerned with bringing finality to the Litigation and bringing a decisive end to the controversy.

²⁹ *State of Karnataka v. Umadevi*

³⁰ scconline, <https://www.scconline.com/blog/post/2022/05/06/weekly-rewind-legal-roundup-legal-news-recap-supreme-court-high-courts-bombay-delhi-madras-legislations/>, (last visited Feb. 6, 2024).

Current status of compliance with the Court order:

Though the SC had modified the orders passed in March 2015 by the final orders on 29th April 2022, the implementation of the orders of the Apex court is yet to see the light of day. Though the verifications of claims have been made on more than one occasion, the direction for another round of verification of the claims by a committee formed could have come with at least certain timelines which may have been flexible in nature.

As there were no directions from the court for an indicative time-bound completion by the committee, the claimant's wait continues to be indefinite. The Silver lining part of the Judgement is to be found in the direction of the Supreme Court which had directed LIC to make the payment within 3 months from the completion of the verification of claims by the Committee. The anxious parties have to keep their faith going in the system and pray for their fortunes to materialize soon, Of course, it is not that the claimants would not be grudging themselves as against those regularised in the first phase as they may consider themselves to be very unfortunate in comparison.³¹ This is not too difficult to gauge as the claimants who have been directed to be paid monetary compensation would obviously stand to lose many of the benefits that come along with retirement such as Gratuity, pension, leave encashment, medical benefits, and other benefits. Having regard to the long and torturous journey the litigants had to endure for more than four decades, it would be in the fitness of things that LIC with all its reputation takes steps and facilitates an expeditious verification of claims by providing all the support and cooperation to the committee. LIC may also consider empowering its network of offices suitably to take all further steps required for the payment of the compensation amount. The claimants whose names have earlier been found to be acceptable to LIC may be advised to complete all other formalities like submission of KYC documents and KYC verification. These kinds of steps would undoubtedly mitigate the anxiety levels of the waiting claimants.

Learnings and Lessons: As the matter has now been concluded by the Apex Court, it is time to learn a few lessons from this litigation.

³¹ iipicai, <https://www.iipicai.in/images/PDF/FAQsonVerificationofClaims.pdf/>, (last visited Feb. 6, 2024).

1. Neither LIC with all its statutory status and backed by regulations and with resources at its command nor the employees appointed on short duration could foresee what was to come in the next forty years of their appointment. These issues arose primarily due to the thinking of LIC to avoid appointments on a regular basis. Though the appointments made were not found to be in breach of any of their rules and regulations, it was determined as an unfair labor practice by the Industrial Tribunal and later affirmed by the Supreme Court. Hence the first learning of this episode is to appreciate that a more comprehensive farsighted and legally compliant decision-making would avoid unnecessary controversies against decisions of shortsightedness and immediate gains. Prudence would always dictate that one should not get trapped in a complex problem in their zeal to avoid other problems.³² This principle applies to whether it is individuals, organizations, or even the sovereign.

2. The temptation and tendency to avoid recruitment on a regular basis needs to be curbed as there is always the risk of challenges that may eventually come up as has happened in this case.

3. The Legal position and the judgments of the courts could have been entirely different if the employees appointed were other than Class III and Class IV employees for the reason that the legal regime applicable to the Class III and Class IV have the benefits of the Industrial Disputes Act being applicable to them whereas the same would not have been the case if other than workmen were appointed on contractual terms. However, this is not to draw an inference or conclude that such methods can be employed in positions other than Class III and Class IV. As stated above a thoughtful, legally compliant, and rule-based application would serve the interests of all the concerned.

5. Finally, LIC has to appreciate that the Supreme Court has come to its rescue and accepted their pleas of financial burden and principles of constitutional fairness. The situation could have been diametrically opposite if the SC had concluded that the non-implementation was contemptuous in nature. In the end, it is hoped that the Persons entrusted with the responsibility of managing public affairs of public organizations play a constructive role by shunning

³² barandbench, <https://www.barandbench.com/columns/the-lawyers-digest-supreme-court-judgments-passed-in-february-2021/>, (last visited Feb. 6, 2024).

methods that would not stand judicial scrutiny. This would go a long way in sparing precious time, effort, and resources of many.

