

**IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION**

Miscellaneous Application No. 1150 of 2019

In

Contempt Petition (Civil) No. 1921 of 2017

In

Civil Appeal No. 6950 of 2009

Ranbir Singh

...Applicant/Petitioner

Versus

**SK Roy, Chairman, Life Insurance
Corp. of India & Anr.**

...Respondents

WITH

MA 1151/2019 in C.A. No.6950/2009

WITH

MA 1868/2019 in CONMT.PET.(C) No.1921/2017 in C.A. No. 6950/2009

WITH

MA 1862/2019 in CONMT.PET.(C) No.1921/2017 in C.A. No. 6950/2009

WITH

MA 1861/2019 in CONMT.PET.(C) No.1921/2017 in C.A. No.6950/2009

WITH

MA 1874/2019 in CONMT.PET.(C) No.1921/2017 in C.A. No.6950/2009

WITH

MA 1873/2019 in CONMT.PET.(C) No.1660/2018 in C.A. No.6950/2009

WITH

MA 1940/2019 in CONMT.PET.(C) No.1921/2017 in C.A. No.6950/2009

WITH

MA 1882/2019 in CONMT.PET.(C) No.1921/2017 in C.A. No.6950/2009

WITH

MA 1883/2019 in CONMT.PET.(C) Nos.1921/2017 in C.A. No.6950/2009

WITH

MA 1876/2019 in CONMT.PET.(C) No.1921/2017 in C.A. No.6950/2009

WITH

MA 1888/2019 in CONMT.PET.(C) No. 1921/2017 in C.A. No. 6950/2009

WITH

MA 1866/2019 in CONMT.PET.(C) No.1921/2017 in C.A. No.6950/2009

WITH

MA 1860/2019 in CONMT.PET.(C) No.1921/2017 in C.A. No.6950/2009

WITH

MA 1393/2019 in CONMT.PET.(C) No. 31-32/2018 in C.A. No.6950/2009

WITH

MA 1875/2019 in CONMT.PET.(C) No.1660/2018 in C.A. No.6950/2009

WITH

MA 1765/2019 in CONMT.PET.(C) No.1944/2017 in C.A. No.6956/2009

WITH

MA 1402/2019 in CONMT.PET.(C) No.1965-1967/2017 in C.A. No. 6953/2009

WITH

MA 1859/2019 in CONMT.PET.(C) No.1921/2017 in C.A. No.6950/2009

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MA 1869/2019 in CONMT.PET.(C) No.1921/2017 in C.A. No.6950/2009

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MA 1864/2019 in CONMT.PET.(C) No.1921/2017 in C.A. No.6950/2009

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MA 1872/2019 in CONMT.PET.(C) No. 1921/2017 in C.A. No. 6950/2009

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W.P.(C) No.43/2020

WITH

MA 1867/2019 in CONMT.PET.(C) No.1921/2017 in C.A. No. 6950/2009

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MA 1889/2019 in CONMT.PET.(C) No.1921/2017 in C.A. No.6950/2009

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MA 1878/2019 in CONMT.PET.(C) No. 1921/2017 in C.A. No. 6950/2009

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MA 1884/2019 in CONMT.PET.(C) No.1921/2017 in C.A. No.6950/2009

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MA 1892/2019 in CONMT.PET.(C) No. 1921/2017 in C.A. No.6950/2009

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MA 1895/2019 in CONMT.PET.(C) No. 1921/2017 in C.A. No.6950/2009

WITH

MA 1987/2019 in CONMT.PET.(C) Nos.1968-1969/2017 in C.A. No. 6953/2009

WITH

W.P.(C) No. 110/2020

WITH

MA 2085/2019 in CONMT.PET.(C) No. 1965-1967/2017 in C.A. No. 6953/2009

WITH

MA 2339/2019 in C.A. No. 6951/2009

WITH

MA 557/2020 in CONMT.PET.(C) No. 1965-1967/2017 in C.A. No. 6953/2009

WITH

MA 858/2020 in CONMT.PET.(C) No. 1965-1967/2017 in C.A. No. 6953/2009

WITH

MA 412/2021 in CONMT.PET.(C) No. 1968-1969/2017 in C.A. No. 6953/2009

WITH

MA 1865/2019 in CONMT.PET.(C) No.1921/2017 in C.A. No.6950/2009

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WITH

MA 1885/2019 in CONMT.PET.(C) No. 1921/2017 in C.A. No. 6950/2009

AND WITH

MA 1877/2019 in CONMT.PET.(C) No. 1921/2017 in C.A. No. 6950/2009

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

This judgment has been divided into sections to facilitate analysis. They are:

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A Introduction

1 This litigation has a long and chequered history. The dispute, a familiar terrain in service jurisprudence, pertains to the claim for absorption of persons who were engaged by the Life Insurance Corporation of India¹ as temporary/*badli*/part-time workers. Section 23(1) of the Life Insurance Corporation Act 1956² enables LIC to employ such number of persons as it thinks fit to discharge its functions. Pursuant to clauses (b) and (d) of Section 49(2), LIC has framed the Life Insurance Corporation of India (Staff Regulations) 1960³. Regulation 8 empowers LIC to appoint persons on a temporary basis in Class III and Class IV posts. After an amendment which was notified on 7 August 1971, Regulation 8 provides as follows:

“8. Temporary Staff:-

(1) Notwithstanding anything contained in these Regulations the Managing Director or Executive Director (Personnel), a Zonal 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 Chairman from time to time.

(2) No person appointed under sub-regulation (1) shall only by reason of such appointment be entitled to absorption in the services of the Corporation or claim preference for recruitment to any post.”

2 On 31 January 1981, Sections 48 and 49 were amended to impart statutory force to the Staff Regulations. According to LIC, its staff and employees are governed by the parent enactment and fall outside the purview of the Industrial

¹ “LIC”

² “LIC Act”

³ “Staff Regulations”

Disputes Act 1947⁴. The validity of the amendment to Sections 48 and 49 has been upheld by this Court in **A V Nachane v. Union of India**⁵.

3 On 13 August 1982, an industrial dispute was raised by the Western Zonal Insurance Employees Association alleging that LIC had been engaging in unfair labour practices by employing temporary, *badli* and part-time workers and was restricting their employment to short tenures to deprive them of the claim for permanency.

4 On 20 May 1985, the dispute was referred for adjudication by the Central Government to the National Industrial Tribunal⁶, Bombay presided over by Justice R D Tulpule⁷, a former Judge of the Bombay High Court. The terms of reference were as follows:

“What should be the wages and other conditions of service of badli, temporary and part-time workmen of the Life Insurance Corporation of India as well as the conditions of their absorption into regular cadre?”

5 On 15 January 1986, the Tulpule Tribunal issued an interim order restraining LIC from recruiting regular employees and from terminating the services of the *ad hoc* workers working with LIC.

⁴ “ID Act”

⁵ (1982) 1 SCC 205 (“A V Nachane”). See also: **M. Venugopal v. Divisional Manager, LIC, Machilipatnam**, (1994) 2 SCC 323; and **Life Insurance Corporation of India v. Raghavendra Seshagirirao Kulkarni**, (1997) 8 SCC 461

⁶ “NIT”

⁷ “Tulpule Tribunal”

6 On 18 April 1986, the Tulpule Tribunal passed an award⁸ which was gazetted on 7 June 1986 stipulating that those *ad hoc* workers who were in employment between 1 January 1982 and 20 May 1985 will be entitled for absorption. The award, *inter alia*, stipulated that:

- (i) Workers claiming absorption in Class III posts should have worked for 85 days in a period of two years; and
- (ii) Workers in Class IV posts should have worked for 70 days in a period of three years.

The calculation of the number of days worked was to be up to the date of the reference. The award contemplated that in the future there would be no occasion for LIC to employ workers in temporary and *badli* categories, save and except for occasional and temporary work.

7 On 1 June 1987, LIC issued circulars for implementing the Tulpule Award. These circulars were disputed by the Unions and Associations representing the workers. Following this dispute over the LIC circulars, the Central Government referred the Tulpule Award for interpretation under Section 36-A of the ID Act to another NIT presided over by Justice M S Jamdar⁹, a former Judge of the Bombay High Court. The terms of reference were:

“Can the Award dated 17/4/1986 special reference to paragraph 44,45,46, 48, 49, 51,52,54,56,57,60,64 and 66 and the interim order dated 14/3/1986 be interpreted to mean that the central office of the Life Insurance Corporation of India is

⁸ “Tulpule Award”

⁹ “Jamdar Tribunal”

empowered to issue instructions/ guidelines, as contained in their circulars issued in this behalf to implement the directions of the Award. 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'?"

8 By an interim order dated 29 June 1987, the Jamdar Tribunal prohibited LIC from recruiting persons to Class III and Class IV posts from the 'open market' during the pendency of the proceedings. LIC has argued before this Court that on account of the restraint imposed on it from recruiting regular employees (through the interim orders dated 15 January 1986 of the Tulpule Tribunal and 29 June 1987 of the Jamdar Tribunal), a large number of *ad hoc* workers were appointed to carry out the day-to-day administration of LIC all over India.

9 The Jamdar Tribunal rendered its award on 26 August 1988¹⁰ and it was notified in the gazette on 1 October 1988. It held that the absorption contemplated in the Tulpule Award did not imply recruitment. LIC challenged the interpretation rendered by the Jamdar Award under Article 136 of the Constitution. This Court granted leave in the proceedings¹¹. During the pendency of the proceedings, terms of compromise were arrived at between LIC and all the Unions representing the workers, save and except the Akhil Bharatiya Jeevan Bima Nigam Chathurthi Sreni Karmachari Sangh¹². The terms of compromise envisaged that the Jamdar and Tulpule Awards should be substituted by the terms and conditions of the

¹⁰ "Jamdar Award"

¹¹ SLP (Civil) No 14906 of 1988, which was numbered as Civil Appeal No 1790 of 1989 on the grant of leave

¹² "Karmachari Sangh"

compromise “in relation to the question of regular employment of the workmen concerned in the said references”. The terms of compromise which were filed before this Court are extracted below:

“TERMS OF COMPROMISE

1. The Management and the workmen agree that the Award of the National Industrial Tribunal presided over by Mr. Justice R.D. Tulpule, in Reference No.NTB-1 of 1988, published on 7th June 1986, and the Award of the National Industrial Tribunal presided over by Mr. Justice M.S. Jandar, dated 26th August 1988 in Reference No. NTB-1 of 1987, published on 1st October 1988, be substituted by the Terms and Conditions of Compromise set out hereinafter in relation to the question of regular employment of the workmen concerned in the said Reference.
2. **The Management agrees to consider the temporary/part-time/badli workmen employed by the petitioner for 85 days in any two years in a Class III post and for 70 days in any three years in a Class IV post in any of its establishments during the period 1.1.82 to 20.5.85, for regular employment on the basis and in the manner stated hereinbelow.** The temporary/part-time/badli workmen who had made applications for regular employment on or before 7.7.86 or those temporary/part-time/badli workmen whose applications had been received after 7.7.86 but before 6.3.87 and had been rejected on account of late submission, shall be eligible for consideration for regular employment. **The selection of the candidate shall be made on the basis of the following qualifications, age test, interview and also having regard to the number of days worked by the candidates. A panel of selected candidates shall be made and the selected candidates shall be appointed in regular employment from the panel in the order of merit prospectively from the dates to be notified as and when vacancies in sanctioned posts for regular employment are filled in from time to time :-**

(i) QUALIFICATIONS – As per Circular No.Per/A/2D/492/ASP/79, dated 27.11.79, prescribed for Class III employee subject to relaxation only in regard to percentage of marks, required as per the qualifications as may be decided by the Managing Director of the Petitioner-Corporation.

Per/A/2D/526/ASP/81, dated 24.6.1981 subject to relaxation in the matter of basic qualifications as may be decided by the Managing Director of the Petitioner-Corporation.

(ii) AGE – As per Regulation No. 18 of (Staff) Regulations, 1960, made by the Petitioner.

(iii) TEST – As per Circular dated 27.11.1979, for Class III as well as Class IV workmen and, in addition, as per Circular dated 4.6.1981 for Class IV workmen only.

(iv) INTERVIEW – As per Circular dated 27.11.79 for both Class III and Class IV workmen.

3. The temporary/part-time/badli workmen who had already qualified in the written test held earlier for consideration for eligible workmen for regular employment, will not be required to appear again for test and they shall be considered for interview on the basis of the test already held.
4. The test and interview for regular employment to be held for the purpose of selection of the temporary/part-time/badli workmen aforementioned, shall be commenced within one month of the order of this Hon'ble Court in terms of this Compromise. The selected candidates shall be appointed in regular employment in accordance with the panel of selected candidates till it is exhausted. The petitioner shall, however, be entitled to made recruitment straightway wherever vacancies are more than the candidates in any Division in view of the necessity or expediency for such recruitment.
5. The recruitment of the temporary/part-time/badli workmen in the categories of Scheduled Caste/Scheduled Tribe, shall be considered first and if any vacancy may remain unfulfilled in that category, the petitioner shall be entitled to made recruitment in accordance with its usual procedure according to its requirements.
6. In view of the abovementioned Terms of Compromise no dispute in relation to the workmen concerned, as referred in Clause 1 hereinabove, survives in regard to the matter

covered by this Compromise between the parties and the respective rights and obligations of the parties in relation to regular employment of the said workman concerned shall be determined and given effect accordingly, if any controversy may arise.”

(emphasis supplied)

The terms of compromise were accepted by an interim order of a two-judge Bench of this Court in **LIC v. Their Workmen**¹³ on 1 March 1989. The order is extracted below:

“Special leave is granted. It appears that out of nine Unions eight Unions said to be representing about 99% of the workers have entered into a compromise with the Management. In the circumstances pending the final disposal of the appeal, we permit the Management and the members of the said eight Unions to implement the terms of compromise by way of interim measure without however, any prejudice to the rights and contentions of the members of the other Union, who have not entered into such compromise with the management.”

10 On 7 February 1996, the above civil appeal in **LIC v. Their Workmen** (supra) was disposed of. This Court accepted the contention of LIC that since eight unions had already accepted the compromise, the ninth union (Karamchari Sangh) should fall in line and act on the terms and conditions of the compromise in the interest of industrial peace. Since the litigating workers in Class IV posts were unable to take the test during the pendency of the proceedings, LIC was directed to exempt Class IV workers from appearing for the test and interview, if the management had power to do so under the regulations or the instructions governing their conditions of

¹³ Civil Appeal No 1790 of 1989 (1 March 1989) (“**LIC v. Their Workmen**”)

service. The Court observed that in the event that the management had no such power, it had “no doubt” that the test prescribed for the workers would be of a lower standard than what had been prescribed under the two circulars mentioned in the compromise. Pursuant to the compromise, LIC appointed 1875 persons to Class III posts and 1324 persons to Class IV posts in various divisions.

11 The genesis of the present dispute relates to a demand raised by the Unions on 4 March 1991, pertaining to the claim for regularisation of those workers who were employed from 20 May 1985 till the date of reference on 4 March 1991. Acting on the demand, the Central Government made the following reference to the Central Government Industrial Tribunal¹⁴ under Sections 10(1)(d) and 2A of the ID Act:

“Whether the action of the Management of Life Insurance Corporation of India in not absorbing badli/temporary and part-time workmen employed in the establishment of LIC after 20.05.1985 is justified? If not, to what relief the workmen are entitled?”

12 On 18 June 2001, the CGIT which was presided over by Shri K S Srivastav, pronounced the award¹⁵ by directing the absorption of the temporary/*badli* workers on the same terms as the Tulpule and Jamdar Awards, with some modifications. The Srivastav Award held that:

“88. In view of the fact I am of the definite view that such type of workmen belonging to temporary/badly/ 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

¹⁴ “CGIT”

¹⁵ “Srivastav Award”

were eligible and suitable to every respect should be given absorption in the service from date of the vacancy in the service in which they could have been absorbed. It will also apply to these employees whose service were terminated by the corporation.”

13 In its ultimate directions, the Srivastav Award directed that the temporary, *badli* and part-time workers who were employed after 20 May 1985 should be granted absorption on the same terms and conditions as was stipulated in the Tulpule and Jamdar Awards (in respect of workers who were employed from 1 January 1982 to 20 May 1985). LIC was directed to publish a notice in the newspapers for inviting applications from individual workers for absorption. If no regular vacancy was available, the award directed supernumerary posts to be created. Paragraph 94 of the Srivastav Award is extracted below:

“94. In view of the matter I find and conclude that the action of corporation denying the absorption of these temporary/badli/part time workmen as dealt with above in the body of this award and employed after 20-05-85 is not justified. I further find that these workmen employed after 20-5-85 should be given absorption in their job on the same terms and conditions as laid down in the aforesaid two awards namely Hon'ble Mr Justice R.D. Tulpule and of Hon'ble Mr Justice M.S. Jamdar in respect of the workmen employed with effect from 1-1-82 to 20-05-85 and dealt with by me as above. It is directed that the corporation shall take into consideration for the absorption of the workmen, on their eligibility and suitability as dealt with above in the award. The case of those workmen belonging to the category of temporary, badli, part-time who had become eligible for their absorption in their job after completing the qualified period of working and were suitable in every respect but their services were terminated and they were turned out of the job by the corporation should also considered for the absorption of such terminated workmen of the corporation shall publish a notice in the daily newspaper having wide circulation throughout India and if in compliance of the notice the workman

concerned consent in writing within stipulated period which could be given in the said notice the case of such workman should also be considered for their absorption in the regular vacancy then existing. At the time of the consideration of absorption of such workmen if it is found that no regular vacancy is available to such workmen, supernumerary posts should also be created and such workmen should be given absorption in it. It is also directed that the cases of these workmen for absorption in existing vacancies should be taken for consideration first irrespective of the regular recruitment if taken. The case of the contractual workmen for absorption shall be taken into consideration as per observation made in the body of the award and on the basis on conditions as stated above.”

14 The Srivastav Award was challenged by LIC in a writ petition¹⁶ before the Delhi High Court. By a judgment dated 15 April 2004, a Single Judge of the Delhi High Court set aside the award and held that the decisions of this Court in **E Prabavathy v. Life Insurance Corporation of India**¹⁷ and **LIC of India v. G Sudhakar**¹⁸ directing LIC to formulate a scheme for regularisation were binding on the CGIT. The judgment of the Single Judge of the Delhi High Court was the subject matter of a batch of Letters Patent Appeals¹⁹ preferred by six Unions/Associations. The appeals were dismissed on 21 March 2007 by the Division Bench. The Division Bench also issued directions for age relaxation and weightage of past service to the workers:

“20. In that view of the matter, while dismissing the appeals filed by the appellants, we issue directions in the following manner:

¹⁶ W P No 4346 of 2001 (High Court of Delhi)

¹⁷ SLP (Civil) No 10393 of 1992 (“**E Prabavathy**”)

¹⁸ Civil Appeal No 2104 of 2000 (“**G Sudhakar**”)

¹⁹ LPA 678 of 2004 with LPA 690 of 2004, LPA 710 of 2004, LPA 722 of 2004, LPA 1023 of 2004 and LPA 1165 of 2004

- (a) for the next three years whenever an advertisement is made by the respondent corporation for filling up vacancies in Class III and Class IV posts, an opportunity shall be given to the appellants to submit their applications, which, if submitted, shall be considered along with all other candidates but giving age relaxation to the appellants and also giving due weightage to the past services rendered by the appellants.

21. In terms of the aforesaid order, the appeals stand disposed of.”

15 The judgment of the Division Bench of the Delhi High Court was assailed in a batch of Special Leave Petitions²⁰ filed by six Unions and Associations representing the workers. In the meantime, LIC began the process of implementing the judgment of the Division Bench of the Delhi High Court on 21 March 2007 by issuing an advertisement for recruitment of Assistants, by allowing age relaxations and weightage for temporary workers to compete with candidates from the open market. On 11 February 2008, this Court directed the maintenance of *status quo*. The civil appeals were eventually disposed of by a two-judge Bench of this Court on 18 March 2015 in **Tamil Nadu Terminated Full Time Temporary LIC Employees Association v. Life Insurance Corporation of India**²¹ which concluded that the Srivastav Award was binding. While restoring the Srivastav Award, the judgment of this Court directed LIC to implement its directions and set aside the judgment of the Delhi High Court.

²⁰ Special Leave to Appeal (Civil) No 15269 of 2007 with SLP (Civil) No 18943 of 2007, SLP (Civil) No 19958 of 2007, SLP (Civil) No 20058 of 2007, SLP (Civil) No 22712 of 2007 and SLP (Civil) No 23623 of 2007

²¹ (2015) 9 SCC 62 (“**TN Terminated Employees Association**”)

16 Following the judgment of this Court, 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** (supra). LIC also instituted review petitions against the judgment in **TN Terminated Employees Association** (supra). The review petitions and the contempt petitions were directed to be heard together. On 9 August 2016, the review sought by LIC was partially allowed²² by restricting the award of back-wages to 50 per cent. The relevant part of the directions of this Court is reproduced below:

“The temporary and badli workers of LIC, who are entitled for regularisation as permanent workmen in terms of the impugned judgment and order dated 18.03.2015 passed by this Court, by applying the terms and conditions of the modified award dated 26.08.1988 passed by Justice Jamdar, are held to be entitled to full back wages as well. However, keeping in mind the immense financial burden this would cause to LIC, we deem it fit to modify the relief only with regard to the back wages payable and therefore, we award 50% of the back wages with consequential benefits. The back wages must be calculated on the basis of the gross salary of the workmen, applicable as on the date as per the periodical revisions of pay scale as stated supra. **The computation must be made from the date of entitlement of the workmen involved in these cases, that is, their absorption**, till the age of superannuation, if any concerned workman has attained the age of superannuation as per the

²² (2016) 9 SCC 366

regulations of the review petitioner-LIC, as applicable to the concerned workman.”

(emphasis supplied)

17 The curative petitions instituted by LIC challenging the judgment in review were rejected on 22 February 2017. In March 2017, LIC sorted out and distributed the applications which had been received in pursuance of its notice dated 21 July 2017 through its zonal offices for implementation of the decision in **TN Terminated Employees Association** (supra). On 16 May 2017, LIC issued directions to the Zonal Managers to implement the Srivastav Award and the order of this Court in the review of **TN Terminated Employees Association** (supra). The circular prescribed the following norms of eligibility for absorption:

- (i) The worker should have been engaged between 20 May 1985 and 4 March 1991;
- (ii) The name of the worker should figure in the list submitted by the Unions to the CGIT in the industrial reference;
- (iii) Class III workers ought to have been engaged for at least 85 days in two calendar years while Class IV workers should have been engaged for at least 70 days in three calendar years;
- (iv) The Union or the Association should have been an appellant before the Supreme Court;

(v) The claimant worker should have submitted a biodata in pursuance of the notice issued by the LIC on 21 July 2015 for recruitment in regularised positions; and

(vi) The worker should have been engaged in accordance with the rules prevalent in LIC.

18 In 2017, various divisions of LIC found 245 workmen to be eligible and they were offered absorption by the Zonal Offices. This led to the initiation of contempt proceedings²³ by the Unions who sought the absorption of all temporary, part-time and *badli* workers and daily wagers who were engaged after 20 May 1985 till date.

19 On 11 May 2018, a two-judge Bench of this Court²⁴ directed the petitioning Unions in the contempt proceedings to submit material documents to show the engagement of the workers between 20 May 1985 and 4 March 1991. This Court also directed LIC to nominate a senior official to scrutinise the documents and to take a final decision in accordance with the prescribed conditions. Consequently, LIC received about eighty-three thousand representations. Upon scrutiny, LIC found seventy-six workers to be eligible for absorption. By an order dated 7 September 2018, a two-judge Bench of this Court²⁵ directed the CGIT at New Delhi to decide upon the eligibility of the claims made by the Unions, Associations and individual workers within a period of three months. However, the Court found that there was no

²³ Contempt Petition (Civil) 1921 of 2017 in Civil Appeal 6950 of 2009

²⁴ **Ranbir Singh v. S K Roy, Chairman, LIC**, Contempt Petition (Civil) No 1921 of 2017 in Civil Appeal No 6950 of 2009 (11 May 2018)

²⁵ **Ranbir Singh v. S K Roy, Chairman, LIC**, Contempt Petition (Civil) No 1921 of 2017 in Civil Appeal No 6950 of 2009 (7 September 2018)

breach of the judgment dated 18 March 2015 in **TN Terminated Employees Association** (supra). The order of this Court is extracted below:

“The crucial dispute in these proceedings is regarding the beneficiaries of the Award dated 18.06.2001 in I.D. No.27 of 1991 of the Central Government Industrial Tribunal (CGIT), New Delhi.

The Award has been finally upheld by this Court in the judgment rendered in Tamil Nadu Terminated Full Time Temporary LIC Employees Association v. Life Insurance Corporation of India and Others, reported in (2015) 9 SCC 62.

Mr. K.K. Venugopal, learned Attorney General for India appearing for the respondents/LIC, submits that for want of documents/materials, the LIC is not in a position to verify as to who are the actual beneficiaries of the Award. Learned counsel appearing for the Union(s) and the individual workers, however, would submit that despite producing the records and despite availability of the original records with the LIC, no positive decision is taken by it.

Faced with such a situation, we are of the view that the CGIT, New Delhi should look into the matter with regard to the claims made by the Union(s)/individual workmen, regarding entitlement to the benefits under the Award and submit a report to this Court. Accordingly, we direct the CGIT, New Delhi to look into the claims made by the Union(s)/individual Workmen and submit a report to this Court within three months.

There is also a dispute raised by some of the respondents that the benefit of Award should be made available to those who have been engaged as Badli workers after 4.3.1991. That is a matter for interpretation by this Court. For the time being, CGIT, New Delhi would limit its enquiry only to the claims of the Badli workers between 20.05.1989 and 04.03.1991, as already indicated by this Court in the order dated 11.05.2018.

We do not find that it is a case of contempt. Therefore, the contempt notices are discharged. However, the applications/petitions be kept pending for the purpose of necessary assistance to the Court.”

On 10 September 2018²⁶, the above order was modified by the same two-judge Bench in the following terms:

“There is also a dispute raised by some of the respondents that the benefit of Award should be made available to those who have been engaged as **Badli/Part-time/Temporary workers** after 4.3.1991. That is a matter for interpretation by this Court. For the time being, CGIT, New Delhi would limit its enquiry only to the claims of the Badli workers between **20.05.1985 and 04.03.1991**, as already indicated by this Court in the order dated 11.05.2018.”

(emphasis supplied)

20 Thereafter, on 12 December 2018²⁷, while dealing with the batch of contempt petitions, a two-judge Bench of this Court directed the CGIT, in terms of this Court’s previous directions dated 7 September 2018 in the same contempt proceedings, to “look into the matter with regard to the claims made by the Union(s) individual workmen”. The CGIT was directed to submit its report within four months, as contemplated by the order dated 7 September 2018 and modified on 10 September 2018 in the contempt proceedings. Between October 2018 and 16 May 2018, the CGIT issued notice to the Unions and individuals in the earlier industrial reference to submit their claims. As many as 15,500 claims were submitted on behalf of the Unions, Associations and individual workers claiming absorption and the benefit of the Srivastav Award dated 18 June 2001. LIC submitted its responses before the CGIT. The CGIT submitted its report on 31 May 2019²⁸ to this Court. The report of

²⁶ **Ranbir Singh v. S K Roy, Chairman, LIC**, Contempt Petition (Civil) No 1921 of 2017 in Civil Appeal No 6950 of 2009 (10 September 2018)

²⁷ **Ranbir Singh v. S K Roy, Chairman, LIC**, Contempt Petition (Civil) No 1921 of 2017 in Civil Appeal No 6950 of 2009 (12 September 2018)

²⁸ “**Dogra Report**”

the CGIT will be referred to as the Dogra Report, adopting the name of the presiding officer.

B Dogra Report

21 Before the presiding officer of the CGIT, LIC set up the plea that only those workers whose names were mentioned in the original certified list in the industrial reference were entitled to the benefit of the Srivastav Award. LIC argued that this was also the direction issued by the Supreme Court in the contempt proceedings arising out of a review of **TN Terminated Employees Association** (supra) on 10 September 2018 and reiterated on 12 December 2018. On the other hand, the Unions representing the workers, as well as the individual workers, claimed that they were entitled to the benefit of the award irrespective of whether their claim found place in the original list as certified before the CGIT in the industrial reference. Dealing with this aspect, the Dogra Report concluded that though the order dated 10 September 2018 required the CGIT to verify the list which was already on the record, this did not imply that only those workers whose names figured in the certified list were entitled to absorption, to the exclusion of others. Paragraphs 24 and 25 of the Dogra Report have a bearing on the present proceedings and are hence extracted below:

“24. To my mind, answer to this question has to be given in the light of backdrop of the circumstances which culminated into passing of the Award in ID case No.27 of 1991 which was admittedly upheld by Hon'ble Supreme Court in its judgment dated 18/3/2015 reported as (2015) 9 SCC 62 – Tamil Nadu Terminated Full Time Temporary LIC Employees Vs. Life Insurance Corporation of India. No doubt,

Hon'ble Apex Court in its order dated 10/9/2018 has observed that this Tribunal will verify the list which is available on record. But this does not mean that only such workmen whose names are mentioned in the original/certified list attached with the reference, are liable to be considered for absorption, to the exclusion of other workmen. This Tribunal has to keep in mind that contempt petitions were earlier filed by members of Various Unions before Hon'ble Supreme Court and LIC had also filed contempt petitions in High Court of Delhi against Regional Labour Commissioner. During pendency of said petition, E. Prabhavati and others were impleaded as party at the instance of LIC vide order dated 25/9/2008. Thereafter, memo of parties was filed by LIC by adding Terminated Full Time Temporary LIC Employees Welfare Association as Respondent No.47. In view of this, the contention of the LIC that members of E. Prabhavati & others or Terminated Full Time Temporary LIC Employees Welfare Association are not entitled to any relief, is not tenable, when the said Association has been held to be necessary party. There is not even a whisper in any of the judgment/order of Hon'ble High Court or Hon'ble Supreme Court that only workmen whose names are mentioned in the certified/original list of CGIT Award are to be granted relief. An overall examination of the order dated 10/9/2018 of the Hon'ble Supreme Court shows that this Tribunal is required to verify the list available on record but there is no direction to exclude members of other Union/workmen inasmuch as Hon'ble the Apex Court while considering the claims of contempt petitioners has ordered this Tribunal to consider the claims of those workers who were employed as Badli workers with the Management of LIC during the period from 20/5/1985 to 4/3/1991 subject to fulfilment of number of days as mentioned in the Award.

25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon'ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the

Management/LIC that initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however this Tribunal cannot ignore the fact that UC has not filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable.”

22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable. The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the burden cast upon it by Section 25-D of the ID Act, particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below:

“29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. It is worthwhile to mention here that Section 25-D of the ID Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment. This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991, the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was

pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference against the management.”

23 Based on the above hypothesis, the report proceeded to decide “*prima facie*” the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the “Unions have not seriously disputed the same”, the Dogra Report concludes that “such claimants are to be given benefit of absorption only once”. The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of **TN Terminated Employees Association** (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as *badli* workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.

24 The Dogra Report accordingly found the following workers to be entitled to absorption:

- a) The All India Insurance Employees Association Calcutta and Western Zone Insurance Employees Association had filed a claim on behalf of 3337 workers as part of the list contained in Annexure B. LIC argued that in this list of 3337 workers, 3332 workers did not find mention in the original certified list. The Dogra Report perused the documents and found that all 3337 workers were entitled to the benefit of absorption;
- b) All India LIC Employees Association had filed claims on behalf of 97 workers as a list contained in Annexure C. The Dogra Report found that all 97 workers (except one who commenced work post 4 March 1991) were entitled to absorption and LIC's argument of fabrication of documents was baseless when considered against the general practice of the Branch Managers at LIC;
- c) National Organization of Insurance Workers filed a claim on behalf of workers as a part of Annexure D. The Dogra Report found that all 401 workers in accordance with Annexure D were eligible for absorption;
- d) The All India National Life Insurance Federation Bombay filed two claims on behalf of 1674 workers of the Nagpur Association (Annexure E) and 371 workers of the Hyderabad Association (Annexure F). The Nagpur Association conceded that approximately 84 entries were blank, and 38 workers who had worked after 4 March 1991 and three who worked prior to 1 January 1982 would not be entitled to any benefit. Thus, the 1590 remaining workers of the

PART B

Nagpur Association were found to eligible for absorption (contained in Annexure E-1). The legal heirs of two deceased workers were held to be entitled to monetary benefit in lieu of service. As regards the 371 workers of the Hyderabad Association, the Dogra Report excludes those who had either worked prior to 20 May 1985 or after 4 March 1991 and those eligible for absorption were detailed out in Annexure F-1;

- e) The Akhil Bhartiya Jivan Nigam filed claims on behalf of 890 workers as a part of a list contained in Annexure G. It was admitted that of the 890 workers, 692 were engaged after 4 March 1991, there were 8 repeat entries and 2 workers were engaged prior to 1985. Consequently, after carrying out the exclusions, Annexure G-1 represented the list of eligible workers identified by the Dogra Report for absorption;
- f) The Tamil Nadu Terminated Full Time Temporary LIC Employees Welfare Association filed claims on behalf of 376 workers in Annexure H. After excluding those who had worked prior to or after the cut-off date, a list of eligible employees was tabulated by the Dogra Report in Annexure H-1. Workers who had reached the age of superannuation were held entitled to receive all consequential benefits from LIC; and
- g) Annexure I contained the names of a group of workers, described as the “E-Prabhavati workmen”²⁹ containing 1333 workers. After excluding those who had worked less than the requisite number of days for absorption and those who had been engaged after 4 March 1991, the Dogra Report found the

²⁹ Interchangeably referred as “E Prabavathy”

PART B

remaining workers to be eligible for absorption and their claims were tabulated in Annexure I (A). The specific case of the E Prabhavati group of workers will be dealt with in the course of the present judgment. At this stage, it is be material to note that LIC had contended that this batch of workers had been specifically excluded by paragraph 75 of the Srivastav Award. Notwithstanding this, the Dogra Report has held that this batch of workers would also be entitled to absorption.

25 Apart from the persons named in the annexures mentioned above, the Dogra Report has concluded that the following claims by the Union for absorption would have to be allowed:

- (i) Annexure J filed on behalf of 36 workers by the LIC Workers Union Kanpur – where 35 workers were allowed absorption (except 1 worker recruited after the cut-off date);
- (ii) Annexure K filed on behalf of 17 workers by the LIC Workers Union, Gujarat Unit – where 4 out of the 17 workers were held eligible;
- (iii) Annexure L filed on behalf of 119 workers from the Jodhpur Division of LIC – where all were held eligible for absorption (while it was noted that 1 worker's name appeared twice);
- (iv) Annexure M – 22 workers were held entitled to absorption;
- (v) Annexure N – 2 workers out of the 54 were held entitled to absorption since only these two worked during the relevant period;

- (vi) Annexure O – 1 out of 9 workers was held entitled to absorption, since the others had been employed after the cut-off date of 4 March 1991;
- (vii) Annexure P – 4 workers were held entitled to absorption;
- (viii) Annexure Q – workers in this list were held not entitled to the benefit of absorption as they had worked after the cut-off date of 4 March 1991; and
- (ix) Apart from the above annexures, the Dogra Report scrutinized the claim of several individual workers and determined whether they were entitled to absorption.

C LIC's objections to the Dogra Report

26 Broadly speaking, LIC has urged the following objections to the Dogra Report:

- (i) The CGIT was not entrusted with the task of adjudication but of verification;
- (ii) The orders passed by this court in the contempt proceedings arising out of the review of the decision in **TN Terminated Employees Association** (supra) on 11 May 2018, 7 September 2018 and 10 September 2018 indicate that:
 - (a) In the course of verification, CGIT was not entitled to travel beyond the Srivastav Award dated 18 June 2001;
 - (b) The CGIT had to verify only those claims where the workers were engaged between 20 May 1985 and 4 March 1991; and
 - (c) The verification by CGIT was to be confined only to those *badli*, temporary and part-time workers whose names were contained in the original

- certified list in the reference leading to the Srivastav Award dated 18 June 2001;
- (iii) The CGIT was duty-bound to verify only the documents produced by LIC to determine whether the workers were working during the specified period. The Dogra Report has found that almost all the names of workers submitted by the Union were eligible without due verification;
- (iv) A total of 15,465 claims were submitted, which include:
- (a) Persons who were engaged beyond the stipulated period between 20 May 1985 and 4 March 1991;
 - (b) Persons whose names were not in the certified list before the CGIT in the industrial reference; and
 - (c) Persons from the E Prabhavati group who were not covered by the Srivastav Award, as expressly set out in paragraph 75 of the award;
- (v) During the course of the verification by LIC, it was found that the documents/material produced by several workers were fabricated and there was a duplication of names; and
- (vi) Though paragraph 75 of the Srivastav Award had categorically held that the group of workers described as the “E Prabhavati” group were not entitled to relief, the Dogra Report held them to be entitled for absorption. LIC has also submitted objections to the certification which has been carried out in respect of certain workers whose names are set out in the annexures to the Dogra Report.

27 At this stage, it would be material to note that the original certified list of workers in the reference contained the names of 4024 workers. According to LIC, if the certification exercise carried out in the Dogra Report were to be accepted, about 11,780 workers would be entitled to absorption.

D The E Prabavathy Group

28 The Srivastav Award dated 18 June 2001 details the history pertaining to this group of workers. Paragraphs 19-20 and 75 of the Award are extracted below:

“19. Thereafter the employees employed as temporary, badli and part time after 20th May 1985 raised demand for their absorption regularising too in the regular service. When their demands were not accepted by the corporation several writ petitions in this respect were filed before the Hon’ble High Court of Madras. These writ petitions were filed before the Hon’ble High Court of Madras between the years 1989 to 1991. The writ petition No.10367/89 filed was between the terminated full time temporary LIC Welfare Association and Senior Divisional Manager, LIC, Khanjavar. This writ petition alongwith other writ petitions total 18 writ petitions were listed for hearing before the full bench of Hon’ble High Court of Madras. After hearing the parties of all the writ petitions the Hon’ble High Court of Madras gave judgment which is reported as 1993(1) LLJ 1030 between terminated full temporary employees welfare association and Senior Divisional Manager, LIC, Khanjavar. All the writ petitions were dismissed by the Hon’ble High Court of Madras.

20. Parties had then preferred civil appeal before the Hon’ble Supreme Court of India against judgment of the Hon’ble High Court of Madras. These civil appeals were numbered as SLP (C) 10393 to 10413/92 E. Prabhawati and others Vs. LIC of India and others. It appears that in the said civil appeal on the directions of the Hon’ble Supreme Court Corporation had framed a scheme for the regularization of the employees who were granted ad hoc appointments for 85 days at intervals from time to time was placed before the

Hon'ble Supreme Court. After hearing the parties by means of interim order dated 23-10-92 found the scheme as reasonable and was approved to the existence of the scheme contained in clauses (a) and (d) of paragraph 1 and the corporation was directed to proceed to regularise the employees eligible in accordance with the scheme. The clauses of (a) and (d) of the scheme have been reproduced in the order by the Hon'ble Supreme Court of India. With the aforesaid direction all the civil appeals were disposed of by the Hon'ble Supreme Court.

[...]

75. Now as regard the binding effect of the order dated 23-10-92 passed by Hon'ble Supreme Court of India in SLP No. 10393-10411/92 E. Prabhawathy and others Vs. Life Insurance Corporation of India and another confirming the scheme of absorption/regularisation as argued on behalf of the corporation in my view can be well accepted. The order passed I find is between the same parties. E. Prabhawathy and other is the party in this proceeding being impleaded at the subsequent stage of the proceeding. Statement of claim has been filed in the present case by the aforesaid workmen. The said order dated 23-10-92 of Hon'ble Supreme Court is thus between same parties of the case and in view of the circumstances. I find that workmen has no ground to challenge the legality of the said order dated 23.10.92. The conditions of the workmen made in this regard are not accepted.”

29 At this stage, it would be material to note that on 23 October 1992, a three-judge Bench of this Court specifically dealt with the above group of workmen in **E Prabavathy** (supra). The judgment of this Court is extracted below in its entirety:

“ORDER

Special Leave granted.

In State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc., (JT 1992(5) S.C. 179), this court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While

laying down the guidelines in this behalf, this court observe in paragraph 43 as under:-

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee."

The LIC was asked to work out a scheme for the purpose of regularization of employees who were granted adhoc appointments for 85 days at intervals from time to time. The learned counsel for the LIC has placed before us a Scheme for regularization of such adhoc employees. We have given our anxious consideration to the Scheme proposed by the LIC and have also heard both Mr. Ramamurthy and Mr. Salve at length and we are of the opinion that the Scheme proposed by LIC is a reasonable one and commands acceptance, save and except the fact that the recruitment scheduled for November, 1992 will be postponed by not less than six weeks to enable the eligible adhoc employees to compete with others for selection at the said recruitment. We are of the opinion that the relaxation granted to these adhoc employees for having worked with the LIC in the past in the matter of age and qualification suffices. The further provision that if such an adhoc employee has worked between 20th May, 1985 and till date for 85 days in any two consecutive calendar years, is a reasonable stipulation for eligibility for regularization. We are of the opinion, the scheme is in consonance with the guidelines which we have laid down in paragraphs 43 to 49 of Piara Singh's judgment. Mr. Salve, the learned counsel for the LIC, also informed us that in regard to future adhoc appointments/regularization the LIC is in the process of making a scheme consistent with the guidelines laid down in

Piara Singh's case so that this device of employment for 85 days which has not been approved may not be resorted to in future. The Scheme contained in Clauses (a) to (d) of paragraph 1, which is as under, is approved subject to the postponement of the recruitment scheduled in November, 1992 by at least six weeks and the LIC will proceed to regularize the employees eligible under the Scheme;

(a) All those temporary employees who have worked for 85 days in any two consecutive calendar years with the Life Insurance Corporation between 20th May, 1985 uptill date and who confirmed to the required eligibility criteria for regular recruitment on the dates of their initial temporary, appointment will be permitted to compete for the next regular recruitment to be made by the Life Insurance Corporation after the regular recruitment for these posts currently scheduled for November, 1992.

(b) These candidates will be considered on their merits with all other candidates who may apply for such appointments, including those from the open market.

(c) These candidates will be given an age relaxation for applying for regular recruitment provided that they were eligible on the date of their first temporary appointment for securing regular appointment with the Life Insurance Corporation.

(d) If these candidates are otherwise eligible, they can apply for regular recruitment in the normal course.

This regularization will, in the circumstances, be by selection for appointment. We make the above clauses of the Scheme as part of our order.

Mr. Ramamurthy, the learned counsel for the petitioners, further submitted that certain questions of law in regard to the interpretation of section 84 of the LIC Act, 1956, as amended by the LIC Amendment Act, 1981, and Section 2(oo) (bb) of the Industrial Disputes Act, 1947, arise for consideration in the present case in view of the judgment of the Madras High Court. We may state that we express no opinion on the said questions of law as they do not survive in view of the scheme

which LIC has worked out and which we have approved. It is not necessary for us to go into those questions and we leave them open for decision in an appropriate case in future.

The Civil Appeals will stand disposed of accordingly with no order as to costs.”

30 The above order of the three-judge Bench in **E Prabavathy** (supra) indicates that LIC had been directed by the Court to work out a scheme for the purpose of regularising workers who were granted *ad hoc* appointment for a period of 85 days from time to time. A scheme was prepared by LIC. The three-judge Bench had given “its anxious consideration to the scheme proposed by the LIC” and having heard both counsel for the workers and for LIC, held that it was “of the opinion that the scheme proposed by LIC is reasonable one and commands acceptance”. The only modification was a postponing of the recruitment which was scheduled on 1 November 1992 to allow eligible *ad hoc* workers to compete with others for selection at the recruitment. This Court affirmed the relaxation of age and qualifications granted by the scheme to eligible *ad hoc* workers who had worked between 20 May 1985 “till date” in any two calendar years. This Court accepted the scheme which was proposed by LIC, subject to the modification noted above. This Court held that regularisation would be by selection for appointment. The clauses of the scheme were incorporated as a part of the order dated 23 October 1992 in **E Prabavathy** (supra). In this backdrop, paragraph 75 of the Srivastav Award specifically excluded the claims of the E Prabavathy workers who were governed by the order of this Court dated 23 October 1992 in **E Prabavathy** (supra). The grievance of the LIC is

that despite this, the Dogra Report concludes that this group of workers would be eligible for absorption in terms of the Srivastav Award.

E Sequel to E Prabavathy

31 Following the order of this Court dated 23 October 1992 in **E Prabavathy** (supra), LIC framed the Life Insurance Corporation of India (Employment of Temporary Staff) Instructions 1993. A contempt petition was moved before this Court alleging that the scheme which was notified by LIC on 28 June 1993 was not in accordance with the order in **E Prabhavathy** (supra). The contempt petition was dismissed by this Court on 12 July 1993.

32 In 1998, a batch of writ petitions was filed in the High Court of Andhra Pradesh seeking the relief of absorption on a permanent basis. Among the petitions was a petition instituted by G Sudhakar and others. A Single Judge of the High Court of Andhra Pradesh dismissed the petition, placing reliance on the decision in **E Prabavathy** (supra). On 3 November 1998, the Division Bench of the High Court directed LIC to frame a scheme for regularisation. LIC preferred a Special Leave Petition against the judgment of the Division Bench in **G Sudhakar** (supra) which was allowed by this Court³⁰ on 22 November 2001. A two-judge Bench of this Court held in **G Sudhakar** (supra) that the scheme approved in **E Prabavathy** (supra) shall govern the absorption of all *ad hoc* workers in the country. This Court's order dated 22 November 2001 in **G Sudhakar** (supra) is extracted below:

³⁰ Civil Appeal No 2104 of 2000

“This appeal is by the Life Insurance Corporation of India (for short “the Corporation”) against the Division Bench Judgment of the Andhra Pradesh High Court. The Respondents filed a Writ Petition praying for a mandamus to the corporation for their absorption on permanent basis which stood dismissed.

On an appeal being carried, the Division Bench of the High Court disposed of the appeal with a direction to the corporation to frame a scheme for regularisation of the employees and regularise their services in accordance with such scheme. It is this direction of the High Court which is the subject matter of challenge in this Appeal.

Mr. Salve, the learned Solicitor General appearing for the Corporation stated that, in fact, in the case of E. Prabhavathy & Ors. v. The Life Insurance Corporation of India & Anr. (Civil Appeals arising out of SLPs Nos. 1039-10413/1992), this Court was in seisin of a similar problem and during the hearing of that appeal, a tentative scheme was produced before this Court and the Court framed the terms of those schemes as a part of the order and disposed of the appeal in terms of the said scheme on 23rd October, 1992. The four clauses of the said scheme which formed a part of the order are quoted hereinbelow in extenso :-

“Scheme :

(a) All those temporary employees who have worked for 85 days in any two consecutive calendar years with the Life Insurance Corporation between 20th May, 1985 uptill date and who conformed to the required eligibility criteria for regular recruitment on the dates of their initial temporary appointment will be permitted to compete for the next regular recruitment to be made by the Life Insurance Corporation after the regular recruitment for these posts currently scheduled for November, 1992;

(b) These candidates will be considered on their merits with all other candidates who may apply for such appointments, including those from the open market.

(c) These candidates will be given an age relaxation for applying for regular recruitment provided that they were eligible on the date of their first temporary appointment for securing regular appointment with the Life Insurance Corporation;

(d) If these candidates are otherwise eligible, they can apply for regular recruitment in the normal course.

According to the learned Solicitor General, since a scheme is in existence, it is no longer necessary to evolve a fresh scheme for these employees who were the parties before the Andhra Pradesh High Court. He also stated that in the meantime, a set of instructions have been framed called the "Life Insurance Corporation of India (Employment of Temporary Staff) Instructions, 1993" which takes care of such employees who were continuing for a fairly long period without being regularised.

Mr. Krishnamurthy, the learned Senior Counsel, on the other hand, contended that the aforesaid instructions will not govern the case of the employees who were there before the High Court, as they were the appointees between 1986 and 1993. He further contended that a similar matter, in the case of *The Management of the LIC of India v. Their Workmen* (C.A. Nos. 1790/89) a Bench of this Court has disposed of with a direction to consider the case of regularisation considering the suitability at a lesser standard by its judgment dated 7th February, 1996 and, therefore, there is no infirmity with the impugned direction of the High Court.

Having examined the judgment dated 7th February, 1996 of this Court in C.A. Nos. 1790/89, we find that the earlier 3 judge bench decision dated 23rd October, 1992 has not been noticed. The aforesaid three-judge bench decision unequivocally makes the provisions of the scheme as a part of the order. Necessarily, therefore, the case of regularisation of the employees of the corporation could be dealt with in accordance with the said scheme and it would not be necessary to evolve a fresh scheme for a group of employees. Mr. Krishnamurthy further contended that the E. Prabhavathy's case (*supra*) relates to the employees of Tamil Nadu division. But, it is not disputed that they are the employees of the Corporation. If the Corporation has evolved a scheme assuming for the Tamil Nadu division, then the same could be equally applicable to the employees of all Divisions in the country. That being the position, the scheme which has been approved and formed a part of the order of this Court dated 23-10-1992 should govern the case of these respondents who were writ petitioners before the High Court of Andhra Pradesh

Needless to mention, in the earlier decision of this Court dated 23-10-1992 this Court has not limited the applicability of

the scheme only to the employees of the Tamil Nadu Division. In the aforesaid circumstances, the High Court of Andhra Pradesh was not justified in issuing the impugned direction to the Corporation to evolve a new set of scheme to govern the case of the employees who had filed writ petitions in the High Court. We, therefore, set aside the impugned direction of the Division Bench of the High Court and substitute the same with the direction that the case of regularisation of these respondents shall be considered in accordance with the scheme which formed a part of the order of this Court dated 23-10-1992, if not already considered. This appeal accordingly stands disposed of.”

33 The above judgment of this Court in **G Sudhakar** (supra) lays down that:

- (i) The order dated 23 October 1992 in **E Prabavathy** (supra) made the scheme as a part of its order. Necessarily, the case for the regularisation of the workers of LIC would be dealt with in accordance with the scheme. Hence, it was not necessary to evolve a fresh scheme for a different group of workers;
- (ii) Though **E Prabavathy** (supra) dealt with workers of the Tamil Nadu Division, the scheme which was evolved by LIC would equally be applicable to workers of all divisions in the country;
- (iii) The decision in **E Prabavathy** (supra) has not limited the applicability of the scheme only to the workers of the Tamil Nadu division; and
- (iv) The Division Bench of the High Court of Andhra Pradesh was not justified in evolving a new scheme to govern the workers who had filed a Writ Petition and its judgment accordingly stands set aside.

34 The decision of a two-judge Bench of this Court dated 7 February 1996 in **LIC v. Their Workmen** (supra) arising out the Jamdar and Tulpule Awards has not

noticed the earlier decision dated 23 October 1992 of a three-judge Bench in **E Prabavathy** (supra). Subsequently, on 18 January 2011 in **LIC v. D V Anil Kumar**³¹, a two-judge Bench of this Court disposed of the appeal by accepting the terms of the scheme framed by LIC for the absorption of Class IV workers. The attention of this Court has also been drawn to an order dated 20 October 2016 of this Court in **Hashmuddin v. LIC**³² followed by an order dated 15 January 2020, which accepted a scheme formulated by LIC for workers who had rendered service for more than sixteen years.

F Submissions

35 On behalf of LIC, Mr ANS Nadkarni, Senior Counsel, made the following submissions:

- (i) As a consequence of the Dogra Report, LIC would be required to regularise about 11,780 workers who claim to have worked for a limited number of days. No verification of these claims has been done either by the LIC or by the CGIT in the Dogra Report. This would amount to an illegal backdoor entry, which would be contrary to the statutory regulations framed by the LIC. Further, LIC would also face the issue of a lack of sanctioned posts for these workers;

³¹ Civil Appeal Nos 953-968 of 2005 (“**LIC v. D V Anil Kumar**”)

³² Civil Appeal No 2268 of 2011

- (ii) The Tulpule Award dated 17 April 1986 and the Jamdar Award dated 26 August 1988 directed the regularisation of persons working between 1 January 1982 and 20 May 1985 who: (a) had worked as Class IV workers for a minimum period of 70 days in any three calendar years; or (b) had worked as Class III workers for a minimum period of 85 days in any two calendar years. However, these awards were substituted by a settlement which was arrived at in the civil appeals before this Court in **LIC v. Their Workmen** (supra), which were finally adjudicated upon by an order dated 7 February 1996;
- (iii) Both the Tulpule and Jamdar Awards directed regularisation and absorption without verifying the existence of sanctioned posts. During the pendency of the litigation, LIC was enjoined from making fresh recruitment till the awards were pronounced. As a result of the interim orders dated 15 January 1986 and 29 June 1987, LIC could not pursue an open, competitive and transparent process for selection on the basis of an advertisement followed by a written examination and interview. The last recruitment process took place in 1984, and till 1993 there was no fresh recruitment. This necessitated the making of temporary appointments between 1985 and 1991 to operate LIC's 2048 branches across India;
- (iv) The Srivastav Award dated 18 June 2001 arose out of a reference dated 4 March 1991, which required the tribunal to adjudicate whether LIC's action of not absorbing *badli*/temporary/part-time workers employed after 20 May 1985 was justified. The award directed the absorption of "the concerned workmen",

i.e., those employed after 20 May 1985 (and thus not covered by the Tulpule and Jamdar Awards) who had worked as Class III workers for a minimum of 85 days in two calendar years or who had worked as Class IV workers for a minimum of 70 days in three calendar years. The award directed that if regular vacancies did not exist to accommodate these persons, supernumerary posts would have to be created by LIC. Such a direction would be contrary to the principles which have been enunciated in the decision of this Court in **ONGC v. Krishan Gopal**³³. LIC as a statutory corporation is governed by its regulations, and no appointment beyond the vacancies in sanctioned posts can be made;

(v) The LIC Act was amended by Act 1 of 1981. The amendment to Section 48(2A) stipulates that the regulations which have been framed prior to 1981 are deemed to be rules framed under Section 48(2)(cc). Further, Section 48(2C) stipulates that the rules framed under Section 48(2)(cc) would override the provisions of the ID Act. The provision has been held to be constitutionally valid by this Court in **M. Venugopal v. LIC**³⁴;

(vi) Though LIC is bound by the judgment of this Court in **TN Terminated Employees Association** (supra) which has restored the Srivastav Award (subject to its modification in the review petition in regards the quantum of back wages), it is also bound by:

³³ 2020 SCC OnLine SC 150

³⁴ (1994) 2 SCC 323 (“**M. Venugopal**”)

- (a) The order dated 23 October 1992 of a three-judge Bench of this Court in **E Prabavathy** (supra) which upheld the scheme formed by LIC for absorption of *ad hoc* workers;
- (b) The order dated 22 November 2001 of a two-judge Bench of this Court in **G Sudhakar** (supra) which held that the scheme which was accepted in **E Prabavathy** (supra) would not be limited only to the workers in that case but would be applicable to all the workers of LIC in all its divisions across India; and
- (c) The settlement which substituted the Tulpule and Jamdar Awards, which was recorded by this Court while disposing of the civil appeals by its final order dated 7 February 1996 in **LIC v. Their Workmen** (supra);
- (vii) On 16 May 2017, LIC issued instructions under Regulation 4 of its Staff Regulations to all Zonal Managers to implement the Srivastav Award and this Court's orders. Consequently, 245 workers were offered absorption after being found eligible;
- (viii) In terms of the order of this Court dated 18 January 2011 in **LIC of India v. D V Anil Kumar** (supra), LIC framed a scheme to regularise Class IV workers who were engaged for 5 years or more and consequently, 4770 persons were appointed on regular posts;
- (v) Following the order of this Court dated 11 May 2018 in the contempt proceedings³⁵, LIC received 8300 representations from individuals claiming to be covered by the Srivastav Award, which were then scrutinised by a senior

³⁵ Contempt Petition (Civil) No 1921 of 2017 in Civil Appeal No 6950 of 2009

officer. Subsequently, 76 claimants were found to be eligible for absorption in addition to the 245 individual claimants who had been absorbed earlier;

(vi) By the order of this Court dated 7 September 2018 in the contempt proceedings arising out a review of **TN Terminated Employees Association** (supra), it was expressly made clear that:

(a) The question whether the benefit of the Srivastav Award should be made available to those who were engaged as *badli* and temporary workers after 4 March 1991 is a matter for interpretation before this Court;

(b) The CGIT would limit its inquiry only to the claims of the workers who were employed between 20 May 1985 and 4 March 1991; and

(c) No case in contempt had been established;

(vii) The above position is further clarified by this Court's order dated 10 September 2018 in the contempt proceedings arising out the review of **TN Terminated Employees Association** (supra), in terms of which CGIT was directed to verify the list which was available on its record. Thus, the CGIT was required to scrutinise the applications claiming the benefit of the award against the list of workers who were before the CGIT in the Srivastav Award. Hence, LIC scrutinized the claims of only those who were part of the certified list before the CGIT in the Srivastav Award and had worked between 20 May 1985 and 4 March 1991;

(viii) All India Life Insurance Employees Association and Life Insurance Employees Association (R6 and R2 in the Dogra Report), All India Insurance Employees Association and Western Zone Insurance Employees Association

(R3 and R4 in the Dogra Report), National Organisation of Insurance Workers (R7 in the Dogra Report) and All India National Life Insurance Employees Federation (R9 in the Dogra Report) were all signatories to the compromise which substituted the Tulpule and Jamdar Awards and was noted in this Court's interim order dated 1 March 1989 in **LIC v. Their Workmen** (supra). Further, by the order of this Court dated 7 February 1996 in **LIC v. Their Workmen** (supra), the Karamchari Sangh (R10 in the Dogra Report) was also directed to follow the terms of compromise. Hence, these Unions and Associations who had entered into the compromise substituting the Tulpule and Jamdar Awards are governed by its terms;

(ix) The scrutiny which was envisaged by the order of this Court required the CGIT to: *firstly*, check the presence of the names of the claimants in the CGIT list in the Srivastav Award; and *secondly*, conduct a verification of documents such as appointment letters, extension letters and relieving letters to scrutinise whether the claimants were actually employed for 70/85 days for three/two years respectively. Based on this scrutiny, the 321 eligible workers (245+76) who were beneficiaries of the Srivastav Award have already been absorbed, and any other claims by the workers individually or through the ten Unions are not maintainable;

(x) The Dogra Report has erroneously held that the compromise which was arrived at between the parties was in addition to the rights declared in the Tulpule and Jamdar Awards. To support its reasoning, the Report relies on the findings of this Court at paragraph 39 to 41 of its judgment dated 18

March 2015 in **TN Terminated Employees Association** (supra). However, those observations have only adverted to the interim order dated 1 March 1989 of this Court in **LIC v. Their Workmen** (supra), and not its final order dated 7 February 1996;

(xi) Instead of carrying out the task of verification, the Dogra Report only takes a *prima facie* view and has merely stated that the majority of the workers were eligible for absorption without carrying out the process of verification;

(xii) Though the Unions have admitted that they do not possess either the residential addresses or other particulars of the claimants situated in various regions, the Dogra Report has found 1452 workmen to be eligible across the country; and

(xiii) In summary, the Dogra Report is flawed because it:

(a) Does not consider the CGIT certified list of the Srivastav Award, as directed in the order of this Court dated 10 September 2018;

(b) Ignores that it was not carrying out an adjudicatory function but only a verification exercise;

(c) Initially states that the claimants who had joined after 4 March 1991 are not being scrutinised, yet the final directions consider many such claims; and

(d) Ignores paragraph 75 of the Srivastav Award and gives benefit to persons who are governed by the scheme accepted by this Court in **E Prabavathy** (supra).

36 On behalf of the Unions, Associations and workers, arguments have been addressed by Dr Manish Singhvi, Mr Pallav Sishodia, Mr R Singaravelan, Mr V Prakash and Mr Salman Khurshid, Senior Counsel. In addition to the submissions of Senior Counsel, we have heard Mr Nandakumar, Mr Rakesh Shukla and Mr Shailesh Madiyal. In addition, Counsel appearing on behalf of the workers in various Miscellaneous Applications have been furnished with an opportunity of being heard *in seriatim*. The submissions which have been urged on behalf of the workers are summarised below:

- (i) The present proceedings in the Miscellaneous Applications pertain to the implementation of the Srivastav Award dated 22 June 2001. The Srivastav Award has been upheld in the decision of this Court in **TN Terminated Employees Association** (supra);
- (ii) The review petitions arising from the decision in **TN Terminated Employees Association** (supra) were dismissed by the judgment in **T N Terminated Full Time Temporary LIC Employees Assn. v. LIC**³⁶ and the curative petition was also dismissed on 22 February 2017. Thus, the Srivastav Award has attained finality subject to the modification that the quantum of back-wages has been reduced to fifty per cent. The doctrine of *res judicata* applies between the parties and at this stage, it would not be open to set aside or alter the contents of the award;

³⁶ (2016) 9 SCC 366

- (iii) Though the contempt petitions were disposed of, the CGIT was directed to look into the implementation of the Srivastav Award. The Dogra Report dated 31 May 2019 has been prepared by the CGIT in pursuance of the mandate of this Court;
- (iv) Four grounds have been advanced on behalf of LIC to assail the Dogra report:
- (a) No documents were produced to establish that the workers had worked for 85 days and 70 days across a period of two and three years respectively;
 - (b) The Dogra Report had to consider only the CGIT certified list which was part of the reference proceedings;
 - (c) The Srivastav Award would not apply to workers who commenced work after 4 March 1991; and
 - (d) The Dogra Report also permits the absorption of the workers governed by the judgment of this Court in **E Prabavathy** (supra);
- (v) In response to the above grounds, it is submitted that the Dogra Report has correctly drawn an adverse inference against LIC for not producing the records which were in their possession, while approving the lists. Further, the report duly notes that a majority of the workers had produced documents, which have been accepted after verification;
- (vi) In the event, however, that this Court is inclined to remit the proceedings back for proper verification of the workers who are covered by the Srivastav Award, the following methodology should be adopted:

- (a) LIC has now stated before this Court that its divisional offices are in possession of the records. LIC must produce in the first instance the records available with it for the purpose of verification; and
- (b) The verification to be carried out under the directions of this Court should not be confined to any particular document and the primary onus must lie on LIC to show whether the workers have actually worked during the relevant period;
- (vii) The Srivastav Award did not only deal with the cases of workers who had actually filed cases in the industrial reference. The award specifies that it would apply to all workers, and consequently directed that an advertisement be issued for that purpose. If the award was intended to be limited to the CGIT certified list, there was no occasion to direct a verification to be carried out by the CGIT since the certified list was already available with LIC. Hence, the direction in the order of this Court dated 10 September 2018 in the contempt proceedings arising out of the review of **TN Terminated Employees Association** (supra), that the verification would be carried out of the CGIT list, cannot be read out of context. Consistent with the principles of collective bargaining under the ID Act, all workers who were beneficiaries of the Srivastav Award should be granted absorption;
- (viii) The plea that workers employed after 4 March 1991 are not entitled to relief under the Srivastav Award is contrary to the provisions of Section 18(3)(d) of the ID Act. The purpose of Section 18(3)(d) is to ensure that an award governs not only those who are in service when it is made but to subsequent

workers as well. In any event, at least those workers who were in employment on 18 June 2001, when the award was made, should be granted relief;

(ix) The applicability of the orders of this Court in **E Prabavathy** (supra) and **G Sudhakar** (supra) has been considered in the judgment of this Court in **TN Terminated Employees Association** (supra), and that interpretation has attained finality. Hence, those orders ought not to become the basis to reopen the present proceedings;

(x) As a matter of fact, the Dogra Report suffers from under-inclusion since the claims of workers who were engaged after 4 March 1991 have not been considered, though they may have applied in pursuance of the advertisement issued by the LIC to implement the Srivastav Award;

(xi) The compromise which was arrived at before this Court, as noted in its orders dated 1 March 1989 and 7 February 1996, indicates that it was confined to persons who worked from 1 January 1982 to 20 May 1985. Hence, it has no relevance to the Srivastav Award dated 18 June 2001, which relates to persons who were engaged after 20 May 1985;

(xii) The terms of reference which resulted in the Srivastav Award related to the employment of *badli*, temporary and part-time workers after 20 May 1985. Consequently, there is no warrant for restricting the operation of the award to the period up to 4 March 1991 (which was the date of reference). The benefit of the award must enure not only to the workers who were engaged as temporaries or *badlis* after 20 May 1985 till the date of reference but the same principle must also apply to workers who have been engaged thereafter; and

(xiii) The judgment of this Court has directed the payment of fifty per cent back-wages. For the period after the date of the Srivastav Award, full back-wages should be granted to those who have been absorbed. Back-wages cannot be granted only for the period of 70/85 days, and at the rates which were made applicable to the *badli* workers.

37 The rival submissions would now fall for analysis.

G Prelude – Tulpule and Jamdar Awards, and their Aftermath

38 The Tulpule Award dated 17 April 1986 was made in the context of a reference to the NIT pertaining to the absorption of *badli*/temporary/part-time workers as regular employees of LIC. The award held that all workers who had worked in any capacity, temporary, *badli* or part-time, between 1 January 1982 till 20 May 1985, should be considered as eligible for absorption provided that: (a) Class IV workers ought to have worked for 70 days in any three calendar years; and (b) Class III workers ought to have worked for 85 days in any two calendar years.

39 The Jamdar Award dated 26 August 1998 clarified the meaning of the Tulpule Award dated 17 April 1986. The award discussed the object of the earlier reference, and indicated that LIC had engaged *badli*/temporary/part-time workers on a large-scale and restricted their employment to a particular number of days in order to prevent them from gaining the status of permanency on the basis of the number of days worked. Hence, it held that the object of the reference was to put an end to

such unfair legal practices, to regularise the employment of persons who would have been ordinarily absorbed but for such practices and to reduce to a minimum the disproportionately large contingent of such employees who had been deprived of security of service. The Jamdar Award noted that the Tulpule Award did not contemplate that in computing the number of work days only the days worked in two/three consecutive calendar years should be taken into consideration. Further, it noted that when the Tulpule Award spoke of “absorption”, it did not mean “recruitment”.

40 The Tulpule and Jamdar Awards were the subject matter of a challenge before this Court under Article 136 of the Constitution in **LIC v. Their Workmen** (supra). On 1 March 1989, this Court while granting leave to appeal recorded that eight out of the nine Unions, representing about 99 per cent of the workers, had entered into a compromise with LIC. It was in this backdrop that, pending the disposal of the civil appeals, this Court permitted LIC and these eight Unions to implement the terms of compromise, without prejudice to the rights of the ninth Union. The terms of compromise envisaged that it would operate in substitution of the Tulpule and Jamdar Awards on the question of the regular employment of the workers concerned in those references. The terms of the compromise adopted the norm of employment for 85 days in any two years for Class III workers and employment for 70 days in any three calendar years for Class IV workers between 1 January 1982 and 20 May 1985. Temporary, part-time and *badli* workers who had made applications before a stipulated date were held eligible to be considered for

regular employment. The compromise envisaged that the selection of candidates shall be made on the basis of qualifications, age, written test and interview, and also having regard to the number of days worked. According to the compromise, initially a list of selected candidates was to be drawn up, from which regular employment would be offered in order of merit prospectively from the dates notified, as and when vacancies in sanctioned posts for regular employment were filled up from time to time. Further, as a result of the compromise, the process of recruitment for these candidates would be subject to certain relaxations. Finally, it was envisaged that the dispute in relation to the workers concerned, which had resulted in the Tulpule and Jamdar Awards, would no longer survive, and the rights and obligations of the parties in relation to regular employment would be governed only by the compromise.

41 The compromise was ultimately adopted in the final order of this Court dated 7 February 1996 in **LIC v. Their Workmen** (supra), which disposed of the civil appeals. In the order, this Court accepted the submission of LIC that since eight out of nine Unions (representing an overwhelming majority of workmen) had accepted the compromise, the ninth Union must also act on the basis of its terms and conditions. The Court, however, directed that LIC shall exempt Class IV workers (whom the ninth Union was representing) from a test and interview, if it had the power to do so under the regulations and instructions governing their conditions of service. In the alternative, if there was no such power, it directed that the test which

was prescribed for these workers should be of a lower standard than the test prescribed in the two circulars mentioned in the compromise.

42 There is absolutely no manner of doubt that the compromise which was arrived at by eight out of nine Unions indicated that the Tulpule and Jamdar Awards would stand substituted by the terms of the compromise. The compromise clearly stipulated that the workers who fulfilled the requisite days of work in Class III or, as the case may be, Class IV posts would be eligible. As and when vacancies would arise, they would be offered regular appointment.

43 Prior to the final order of this Court in the civil appeals arising from the Tulpule and Jamdar Awards, the litigation in the E Prabavathy batch was settled by the order dated 23 October 1992. In the order, the Court found that the scheme for absorption which was propounded by LIC was reasonable. The scheme envisaged that all temporary workers who had worked for 85 days in any two consecutive calendar years with LIC between 20 May 1985 and 23 October 1992 and who conformed to the required eligibility criteria for regular appointment on the date of their initial appointment, would be permitted to compete at the next regular recruitment to be made by LIC. These candidates would be considered on their merit as against the other candidates who applied for these posts, including from the open market. They would also be given an age relaxation while applying for a post, if they were eligible for it on the date of their first temporary appointment. This scheme was approved, subject to the postponement by at least six weeks of a recruitment scheduled for November 1992, in order to enable all eligible *ad hoc* workers to compete with

others for selection at that recruitment. The decision in **E Prabavathy** (supra) was evidently not noticed in this Court's order dated 7 February 1996 in **LIC v. Their Workmen** (supra).

44 The order of a two-judge Bench of this Court dated 22 November 2001 in **G Sudhakar** (supra) noted that in **E Prabavathy** (supra), a Bench of three-judges had embodied the clauses of the scheme as a part of their order. Hence, the order in **G Sudhakar** (supra) expressly clarified that though the scheme before this Court in **E Prabavathy** (supra) was evolved in relation to a case from the Tamil Nadu Division of the LIC, it would be equally applicable to the workers of all divisions of LIC in the country. Consequently, in **G Sudhakar** (supra), it was held that the scheme would apply to workers who were before the High Court of Andhra Pradesh as well, and there was no occasion for the High Court to direct that a new scheme should be framed by LIC.

45 It is important to note that the orders of this Court dated 23 October 1992 (in **E Prabavathy** (supra)) and 7 February 1996 (disposing the civil appeals challenging the Tulpule and Jamdar Awards) pre-date the Srivastav Award dated 18 June 2001. On the other hand, the order in **G Sudhakar** (supra), which was dated 22 November 2001, was evidently passed after the Srivastav Award.

H Srivastav Award and the Judgement of this Court

46 The reference before the tribunal leading up to the Srivastav Award was made on 4 March 1991. The reference was in relation to the justification of LIC's non-absorption of persons recruited as temporary, *badli* and part-time workers after 20 May 1985. The Srivastav Award contains an observation that LIC was not guilty of unfair labour practices by continuing persons recruited as temporary, *badli* and part-time workers as non-regular employees. The above observation in the award was in view of the submission of LIC (which was not refuted by the workers) that the workers were continuing in their positions on the basis of injunction orders issued by tribunals and the court, and due to the pressure of the Unions. However, the award also noted that the terms of the reference did not encompass this aspect and the tribunal was not recording a finding.

47 Paragraph 75 of the Srivastav Award referred to the order of this Court dated 23 October 1992 in **E Prabavathy** (supra) which governed the scheme of absorption/regularisation for that batch of workers. It noted that the E Prabavathy group of workers were impleaded to the proceedings leading to the award, and had filed a statement of claim. However, the award concluded that since the order dated 23 October 1992 in **E Prabavathy** (supra) was between the same parties, the legality of the order of this Court could not be challenged by the workers before the tribunal. Hence, the contention of the workers in that regard was not accepted.

48 In paragraph 88, the Srivastav Award concluded:

“88. In view of the fact, I am of definite view that such type of workmen belonging to temporary and part time categories in class III and class IV service of corporation who were employed after following the procedure and were allowed to continue service beyond the qualifying period and were eligible and suitable in every respect should be given absorption in the service from date of the vacancy in the service in which they could have been absorbed. It will also apply to those such employees whose services were terminated by the corporation”

The award finds that LIC was not justified in denying absorption to those temporary/*badli*/part-time workers who were employed after 20 May 1985, and that they should be given absorption on the terms and conditions which were stipulated in the Tulpule and Jamdar Awards (which were in respect of workers employed between 1 January 1982 to 20 May 1985). LIC was directed to take into consideration their claim for absorption on the basis of their eligibility and suitability, as dealt with in the Srivastav Award. Thus, all the *badli*, part-time and temporary workers who have rendered the qualifying period of service and were suitable would also have to be considered for absorption by LIC by publishing a notice in the newspaper. The Srivastav Award directed that in case no regular vacancy was available, supernumerary posts shall be created by LIC for the purpose of absorption and that the case for absorption against existing vacancies would be considered first, irrespective of regular recruitment.

49 The Srivastav Award was set aside by the Single Judge of the Delhi High Court. The Division Bench affirmed the judgment of the Single Judge. Eventually,

the dispute travelled to and resulted in the decision of this Court in **TN Terminated Employees Association** (supra).

50 The judgment in **TN Terminated Employees Association** (supra), dated 18 March 2015, arose from concurring judgments of a Single Judge and of the Division Bench of the Delhi High Court by which the Srivastav Award had been set aside. In appeal, the principal issue which came for consideration before this Court was:

“34.1. (i) Whether the setting aside of the award passed by CGIT dated 18-6-2001 by the learned Single Judge by placing reliance upon compromise reached between the parties in SLP No. 14906 of 1988, which was filed against the award of Justice Tulpule, which award was clarified and affirmed by Justice SM Jamdar, legal and valid?”

The next issue, in relation to the workers’ claim for relief, was consequential in nature. After noticing the interim order dated 1 March 1989 passed by this Court in the proceedings arising out of the Tulpule and Jamdar Awards in **LIC v. Their Workmen** (supra), Justice Gopala Gowda, speaking for the two-judge Bench, observed:

“40. From the perusal of the above order of this Court in *LIC v. Workmen* [SLP (C) No. 14906 of 1988, order dated 1-3-1989 (SC)] , nowhere has it been stated in the terms of the compromise between the parties that the award of Justice R.D. Tulpule dated 17-4-1986 which was clarified upon reference made by the Central Government under Section 36-A of the Act by Justice Jamdar, is either set aside by this Court or substituted the compromise terms in the place of the award except the order referred to supra passed in the above SLP No. 14906 of 1988. In fact, on the other hand it is clearly stated that the compromise terms are between the parties to the said SLP and that it shall not prejudice the respective rights and obligations in relation to the members of the other

union. Therefore, the effect of the award of Justice R.D. Tulpule with regard to the direction given to the Corporation regarding absorption of badli, temporary employees as permanent employees has not been substituted by terms and conditions of the compromise.”

In the above extract, the Court referred to the interim order of this Court dated 1 March 1989 in **LIC v. Their Workmen** (supra) by which, pending the disposal of the appeals, eight out of the nine Unions who had entered into terms of compromise with LIC were permitted to implement it as an interim measure, without prejudice to the rights and contentions of the remaining Union which had not entered into a compromise. Relying exclusively on the interim order of this Court, it was held:

“41. The award of Justice R.D. Tulpule dated 17-4-1986 reiterated by way of clarification in the award passed by Justice Jamdar dated 26-8-1988, in the dispute subsequently has been operative even after the compromise arrived at between the parties to the compromise in *LIC v. Workmen* [SLP (C) No. 14906 of 1988, order dated 1-3-1989 (SC)] before this Court. Therefore, the contention of the learned Senior Counsel on behalf of the Corporation that the said awards are not in operation and that only the terms and conditions of compromise and orders of this Court are binding upon the workmen concerned in these appeals is both not factually and legally correct. This abovesaid argument of the learned Senior Counsel on behalf of the Corporation is not tenable in view of the categorical statement made by this Court in its orders passed in SLP referred to supra, wherein, this Court has permitted the management and members of the said 8 unions to implement the terms of compromise by way of interim measure without any prejudice to the rights and contentions of the members of other union who have not entered into compromise with the management of the Corporation. It is not the case of the Corporation in these appeals either before CGIT or before the High Court or in these proceedings the workmen concerned have also accepted the said terms and conditions of the compromise arrived at between the parties in SLP No. 14906 of 1988. This Court in the order passed in the abovesaid SLP which is

extracted hereinabove has made it very clear that the said compromise was entered into between unions therein, but it does not prejudice the rights and contentions of the workmen concerned whose disputes are in relation to their absorption in their respective posts who were appointed after 20-5-1985. Further, even if some of the workmen are bound under the said compromise that arose out of SLP No. 14906 of 1988, this in no way deters their right to raise an industrial dispute and get the same adjudicated vide order of reference by the appropriate Government to CGIT. The award of CGIT was concluded after rightly examining the facts, circumstances of the case and the legal principles laid down in the awards passed by Justice Tulpule and Justice Jamdar. More importantly CGIT award was passed after rightly appreciating the points of dispute referred to it and on the merits of the case.”

The interpretation of the interim order which has been placed by the Court emerges from the following extract:

“46. Further, by a careful reading of the said order in *LIC v. Workmen* [SLP (C) No. 14906 of 1988, order dated 1-3-1989 (SC)] , it has been made clear that the awards passed by NIT (by Justice Jamdar and Justice Tulpule) after adjudicating the points of dispute in the industrial dispute raised by similarly placed workmen is not disturbed by substituting the terms and conditions of compromise between the parties therein in SLP No. 14906 of 1988. Therefore, the awards in relation to the absorption of the workmen as permanent workmen in the Corporation have got statutory force. This is what is stated by CGIT in its award dated 18-6-2001 on the basis of pleadings and evidence on record, which was erroneously set aside by the High Court by assigning erroneous reasons which is sought to be justified by the Senior Counsel on behalf of the Corporation by placing reliance upon the orders and the Scheme framed in *E. Prabavathy* [*E. Prabavathy v. LIC*, SLP (C) No. 10393 of 1992, order dated 23-10-1992 (SC)] and *G. Sudhakar* [Civil Appeal No. 2104 of 2000, order dated 22-11-2001 (SC)] cases which Scheme has no application to the case of the workmen concerned involved in these appeals referred to supra.”

51 The Court proceeded to hold that both the award of Justice Tulpule, reiterated by way of the clarificatory award of Justice Jamdar, are operative and they have not been terminated by either of the parties as provided by Section 19(6) of the ID Act. The Court held that the terms of compromise and the scheme formulated in **E Prabavathy** (supra) and **G Sudhakar** (supra) do not result in the substitution of the awards made by Justice Tulpule and Justice Jamdar. The Court held that the Srivastav Award would have to be observed by LIC until it was replaced by another settlement in relation to the service conditions of the workers under Section 12 read with Section 18(3) of the ID Act or by another award following the termination of the awards which are in operation. The judgment of this Court concluded that:

- (i) The Tulpule and Jamdar Awards continue to remain operative;
- (ii) The Awards do not stand substituted by the interim order of this court dated 1 March 1989 in **LIC v. Their Workmen** (supra);
- (iii) The orders of this Court in **E Prabavathy** (supra) and **G Sudhakar** (supra) would not stand in the way of an adjudication by the Industrial Tribunal; and
- (iv) Unless the awards are substituted either by another award or settlement, the Tulpule and Jamdar Awards continue to remain operative and binding.

52 On this basis, the Court concluded that the Srivastav Award was legal and valid and shall be implemented by LIC by absorption of the workers concerned in permanent posts. The operative direction which was issued by this Court is extracted below:

“54. It is needless to mention that since we are of the view that the award passed by CGIT in ID No. 27 of 1991 is legal and valid, it shall be restored and implemented by the Corporation by absorbing the workmen concerned in the permanent posts and if they have attained the age of superannuation, the Corporation will be liable to pay all consequential benefits including the monetary benefits taking into consideration the pay scale and revised pay scale from time to time by the Corporation.”

53 None of the Counsel appearing on behalf of the workers in the present batch of cases disputed the factual position, asserted on behalf of LIC, that the judgment of the two-judge Bench in **TN Terminated Employees Association** (supra) affirming the validity of the Srivastav Award contains no reference whatsoever to the final order dated 7 February 1996 in the batch of civil appeals arising from the Tulpule and Jamdar Awards in **LIC v. Their Workmen** (supra). The interim order dated 1 March 1989 in **LIC v. Their Workmen** (supra), which forms the basis of the judgment in **TN Terminated Employees Association** (supra), was passed in the backdrop of a compromise which was arrived between LIC and eight out of the nine Unions and Associations representing the workers. Since the appeals were pending at that stage, the Court granted liberty to the parties to the compromise to implement its terms as an interim measure, without prejudice to the contentions of the ninth Union which had not entered into the compromise. But noticeably, there is a clear omission on the part of the Court in **TN Terminated Employees Association** (supra) to refer to the admitted position that subsequently on 7 February 1996, this Court in **LIC v. Their Workmen** (supra) accepted the submission of LIC that since eight out of the nine unions (representing nearly 99 per cent of the workers in Class

III and Class IV posts) had accepted the compromise, there was no justification for the ninth Union to object. The Court held that it would be in the interest of industrial peace that the ninth Union should also fall in line and act on the terms of the compromise. The civil appeals in **LIC v. Their Workmen** (supra) were disposed of in terms of the above order dated 7 February 1996. The terms of compromise clearly envisaged that the management and the workers had agreed that the awards of the NIT dated 17 April 1986 (Tulpule Award) and 26 August 1988 (Jamdar Award) “be substituted by the terms and conditions of compromise in relation to the question of regular employment of the workmen concerned in the said references”. Once the awards were substituted by the terms of compromise, it would be an impermissible interpretation of law to hold that the awards continued to be operative and binding, notwithstanding the final order of this Court dated 7 February 1996 in **LIC v. Their Workmen** (supra). The final order dated 7 February 1996 has not been adverted to by the two-judge Bench in **TN Terminated Employees Association** (supra). The factual finding is based only on the interim order dated 1 March 1989. The final order dated 7 February 1996 in **LIC v. Their Workmen** (supra) had a crucial bearing on the special leave petitions arising from the judgment of the Delhi High Court setting aside the Srivastav Award.

54 That having been said, it is necessary to also advert to the interpretation which was placed on the decisions of this Court in **E Prabavathy** (supra) and **G Sudhakar** (supra). The two-judge Bench in **TN Terminated Employees Association** (supra) opined that the scheme which was framed in **E Prabavathy**

(supra) was the outcome of an order which was passed in writ petitions filed by the workers and not in the course of the adjudication of an industrial dispute. On this ground, the Court held that the decision in **E Prabavathy** (supra) would not come in the way of an adjudication by the CGIT or NIT while deciding a reference under Section 10 of the ID Act. The background of the decision in **E Prabavathy** (supra) has already been noticed earlier. The decision was rendered on 23 October 1992 in a batch of civil appeals which was being considered by a three-judge Bench. During the pendency of the civil appeals, the Court called upon LIC to formulate a scheme for the regularisation of workers who had been granted *ad hoc* employment for at least 85 days from time to time. The three-judge Bench held, after assessing the terms of the scheme proposed by LIC, that it was reasonable and commended itself for acceptance. The scheme proposed by LIC was approved by this Court with a specific observation that the clauses of the scheme extracted in the order would form a part of the order of this Court. The decision of three Judges in **E Prabavathy** (supra) was thereafter interpreted by a two-judge Bench in its order dated 22 November 2001 in **G Sudhakar** (supra). Noticing that the scheme which has been accepted in **E Prabavathy** (supra) governed workers of the Tamil Nadu Division of LIC, the Court held that the scheme would be equally applicable to the workers of all divisions of LIC in the country. The Court therefore held that it was not necessary to evolve a fresh scheme for a different group of workers, in that case under the directions of the Andhra Pradesh High Court. As a matter of fact, it is also material to note that in paragraph 75 of the Srivastav Award itself there was a specific finding that though the E Prabavathy group of workers had been impleaded in the reference

and had filed a statement of the claim, having regard to the fact that the order of this Court dated 23 October 1992 was between the same parties, the workers had no valid ground to challenge the legality of this Court's order before the tribunal. Despite the clear observations in the Srivastav Award, the judgment of the two-judge Bench in **TN Terminated Employees Association** (supra) has come to the conclusion that the order of the three-judge Bench in **E Prabavathy** (supra) would not preclude an industrial adjudication by the tribunal. The two-judge Bench which delivered the judgment in **TN Terminated Employees Association** (supra) was bound by the order in **E Prabavathy** (supra), which was of a larger Bench of three judges, and the interpretation which was placed on it by another two-judge Bench in **G Sudhakar** (supra). If the two-judge Bench differed, it had to refer the matter to a larger Bench but it was not at liberty to take a final view at variance with binding decisions of a larger Bench and of a co-ordinate Bench.

55 A plea has been urged on behalf of the workers that the judgment in **TN Terminated Employees Association** (supra) has attained finality following the dismissal of the review petition on 9 August 2016 (save for the modification by which the quantum of back-wages was reduced to fifty per cent) and the subsequent dismissal of a curative petition. We are cognizant that the ground, submitting that the decision ignored the final order dated 7 February 1996 in **LIC v. Their Workmen** (supra), was specifically pleaded in review. The only observation in the judgment in review is that LIC has not submitted anything on record to indicate that the judgment

suffers from an error apparent in law. However, having regard to the immense financial burden, the quantum of back-wages would be reduced to fifty per cent.

56 Now, there cannot be any dispute over the principle that the judgment in **TN Terminated Employees Association** (supra), followed by the order in review dated 9 August 2016, are between the present parties and finality has attached to them. LIC is, however, before this Court urging that as a statutory entity with a nationwide presence, it is faced with a situation involving conflicting directions of this Court. LIC has submitted that while on the one hand, the Tulpule and Jamdar Awards were substituted by the terms of compromise on 7 February 1996 in **LIC v. Their Workmen** (supra), this was preceded by the order dated 23 October 1992 of a three-judge Bench in **E Prabavathy** (supra) which accepted the scheme of absorption proposed by LIC and followed by the order dated 28 November 2001 of a two-judge Bench in **G Sudhakar** (supra) which interpreted the decision in **E Prabavathy** (supra) as being applicable to all divisions of LIC. The impact of the judgment in **TN Terminated Employees Association** (supra) is to substitute and supplant the schemes which were evolved before this Court for providing absorption on specified terms. The essence of the schemes which were accepted by this Court was that those temporary, *badli* and part-time workers who fulfilled the requirement of the threshold period of service would be eligible to be considered for the grant of the permanency, subject to certain conditions. The orders passed by this Court envisage that these workers would be considered for the grant of permanency in the course of a recruitment process. The impact of the judgment of the two-judge Bench

in **TN Terminated Employees Association** (supra) is that while on the one hand the Court's orders dated 23 October 1992, 7 February 1996 and 22 November 2001 continued to hold the field, on the other hand the restoration of the Srivastav Award brings in place a regime in conflict with what has been accepted by this Court in these orders. Faced with this predicament, it is necessary for this Court to step in and to correct a manifest miscarriage of justice caused by the decision in **TN Terminated Employees Association** (supra) which has been urged to be *per incuriam*. The consequence of not doing so is serious.

57 The Court is now confronted with claims on behalf of the workers that the principle which has been enunciated in the Srivastav Award and which has been restored by the two-judge Bench in **TN Terminated Employees Association** (supra) must apply to all workers subsequently engaged by applying Section 18(3)(d) read with Section 17A of the ID Act. Hence, a balance will now have to be drawn by this Court, in the exercise of its jurisdiction under Article 142 of the Constitution, which while on the one hand factors in the finality which has attached to the judgment in **TN Terminated Employees Association** (supra) but on the other hand also factors in the essential concerns which have been expressed before this Court by LIC. The formula of providing absorption to part-time, *badli* or temporary workers who have put in 85 days in any two calendar years in a Class III post or 70 days in any three calendar years in a Class IV post will, unless a balance were to be drawn, become an avenue for disregarding the need for an open and transparent process of recruitment by a public sector corporation governed by the

rule of law and the mandate of Articles 14 and 16 of the Constitution. The judgments of this Court, in the context of public employment, lay stress on providing equality of opportunity. As we have recorded earlier in the course of the statements of facts, LIC had been restrained, due to the interim orders which were passed in the course of the various proceedings, from taking recourse to recruitment through the open market. LIC having been restrained by judicial orders from pursuing an open recruitment process, the situation which has now arisen is that unless a balance were to be drawn, absorption of part-time and *badli* workers would become a substitute for a recruitment process based on sanctioned posts, consistent with the principles of reservation and pursued on the basis of a structured recruitment which gives equal opportunities to all applicants. Such a consequence is a serious detriment to constitutional parameters and to the duty of LIC as a public employer to follow a process which is fair and in consonance with Articles 14 and 16 of the Constitution. An open and competitive process for recruitment will enable LIC to recruit the best among the available talent. Substituting this by a back-door entry will be detrimental to the interests of the corporation which is governed by statute.

I Validity of the verification in the Dogra Report

58 Mr ANS Nadkarni, Senior Counsel appearing on behalf of LIC, assailed the Dogra Report on the ground that the remit before the CGIT was only to verify and not to adjudicate. There is no doubt about the premise that the task which was

entrusted to CGIT by the order of this Court dated 7 September 2018 in the contempt proceedings arising out of the review of **TN Terminated Employees Association** (supra) was of verification. But it becomes necessary to consider whether the remit to the CGIT was only confined to the certified list of workers in the industrial reference. It is true that by the order of this Court dated 10 September 2018, the CGIT was directed to verify the list on the record. However, an isolated sentence in the order of this Court cannot be read torn from its context. Paragraph 94 of the Srivastav Award required LIC to also consider the case of those workers who belonged to the temporary, *badli* and part-time category, who had completed the qualified period of working and were suitable in every respect but whose services had been terminated. LIC was directed to publish a notice in the daily newspapers so as to enable such workers to lodge their claims for absorption. LIC issued a public notice in the newspapers on 21 July 2015. Each applicant was required to submit a form for being considered for absorption, of which item 10(b) required a disclosure of the details of the petition before the CGIT including whether the applicant was a petitioner in the industrial reference. The crucial aspect, however, is that the verification which was carried out by the CGIT was not specifically restricted to the certified list of workers. The judgment of this Court in the course of the proceedings in review, records the following submissions being made on behalf of LIC:

“6. The learned Attorney General further submits that as on 31-3-2015, LIC had 55, 427 Class III employees and 5190 Class IV employees. If LIC is directed to consider the absorption of the workmen to the advertisement, then the

number of Class III employees will increase by 11.14% and Class IV employees by 56.65% and the same will affect the employee's ratio in addition to the increase in its financial burden and that the same will be contrary to the interests of the policy-holders. The learned Attorney General estimates the financial liability for implementing the order of this Court at approximately Rs 7087 crores, with the annual liability at around Rs 728 crores per year and that this will be a huge financial burden for LIC to bear.”

The above submission indicates that if LIC were directed to consider the absorption of the workers pursuant to the advertisement, the strength of the Class III employees would increase by 11.1 per cent and Class IV employees by 56.65 per cent, resulting in an annual financial liability of Rs 728 crores. Hence, there is merit in the contention of the Counsel for the workers that the above submission, which is recorded in paragraph 6 of the judgment in review, does not comport with LIC's present stance that the verification was to be confined only to the certified list.

59 This having been said, it is evident that the Dogra Report suffers from clear and manifest errors. As we have already noted earlier, LIC had drawn the attention of the Presiding Officer to the fact that the claims which had been submitted by the Unions, Associations and individual workers during the course of the verification contained duplicate entries. LIC has produced a chart containing details of various workers and claimants. For convenience of reference, the chart is extracted below:

Chart containing details of various Workmen/Claimants from various Associations before the Ld. CGIT Court, New Delhi in I.D. No. 27/1991.													
NAME OF UNION/ASSOCIATION	All India Insurance Empl	All India LIC Employee	All India Life Insurance	All India National Life	All India National Life	EP & Ors (TFTT UCE WA)	Tamil Nadu Terminated Temp	Akhil Bharatiya Jeevan	LIC Workers' Union,	GUJARATE	INDIVIDUALS	TOTAL	

PART I

		oyees Asso ciatio n	s Fede ratio n	Empl oyees Asso ciatio n	Insur ance Empl oyees Fede ratio n- BNP	Insur ance Empl oyees Fede ratio n-VN		orary Full Time LIC Empl oyees Asson	Bima Niga m Chat hurth a Sreni Kara mch ari Sang h	Kanp ur	MP RA RY LI CE A		
A	Claimants as per their list	3337	97	6996	1674	371	1333	376	890	35	105	252	15465
Less	DUPLICATE ENTRIES	0	0	3582	0	0	0	1	9	0	0	0	3592
Less	BLANK ENTRIES	0	0	9	84	0	0	0	0	0	0	0	93
B	Net	3337	97	3404	1590	371	1333	375	881	35	105	252	11780
Less	ENGAGED AFTER 04.03.1991, not reckoned as per Hon'ble SC order 07.09.18	5	1	2109	38	22	477	102	692	1	100	33	3580
Less	ENGAGED BEFORE 20.05.1985, not reckoned as per Hon'ble SC order 07.09.18	0	0	2	3	2	0	1	2	0	0	0	10
C	Net	3332	96	1293	1549	347	856	272	187	34	5	219	8190
Less	Name not found in certified lists received from CGIT	3332	94	1184	1543	339	0	61	186	34	5	219	6997
Less	Engaged less than 85 days (CIII)	0	0	9	1	0	11	90	0	0	0	0	111
Less	Engaged less than 70 days (CIV)	0	0	7	1	6	6	36	0	0	0	0	56
D	Net	0	2	93	4	2	839	85	1	0	0	0	1026
Less	Party in E.P & Ors	0	0	0	0	0	839	83	0	0	0	0	922
E	Net	0	2	93	4	2	0	2	1	0	0	0	104
Less	Documents	0	0	26	3	0	0	2	1	0	0	0	32

PART I

	not submitted to prove eligibility												
Less	Criminal Case pending	0	0	1	0	0	0	0	0	0	0	0	1
Less	Fabricated Documents	0	2	1	1	2	0	0	0	0	0	0	6
G	Found eligible, Absorbed	0	0	65	0	0	0	0	0	0	0	0	65

Note:- 2 Individual Petitioners Sl.no. 29 & 31 have now submitted their claim through INTUC-BNP, however no substantiating documents have been submitted”

60 The Dogra Report eventually concludes that the group of workers, who are governed by the order of this Court in **E Prabavathy** (supra), would also be eligible for absorption. By considering the workers who are governed by the order in **E Prabavathy** (supra) to be eligible for absorption, the Dogra Report has fallen into a clear error. The report has considered those workers who were clearly outside the ambit of its remit since they were governed by a specific order of this Court. That apart, it is evident that the Dogra Report has proceeded on a generalised assumption that a majority of workers had produced documents are eligible for absorption (having drawn a negative inference from LIC's non-production of documents). In this backdrop, it would be necessary to bring about a proper verification before the claims of the workers can be truly considered. The deficiency of the Dogra Report in carrying out a proper verification stands clearly established.

J The Interplay between the Industrial Disputes Act 1947 and Section 48 of the LIC Act 1956

61 Section 48 of the LIC Act confers a rule making power on the Central Government. Clause (cc) of sub-Section (2) of Section 48 was introduced by Act 1 of 1981 with effect from 31 January 1981. Under clause (cc), the Central Government is empowered to frame rules dealing with the following matters:

“(cc) the terms and conditions of service of the employees of the Corporation, including those who became employees of the Corporation on the appointed day under this Act;”

62 Simultaneously by the Amending Act, sub-Sections (2A), (2B) and (2C) were introduced into Section 48. These Sections provide as follows:

“(2A) The regulations and other provisions as in force immediately before the commencement of the Life Insurance Corporation (Amendment) Act, 1981, with respect to the terms and conditions of service of employees and agents of the Corporation including those who became employees and agents of the Corporation on the appointed day under this Act, shall be deemed to be rules made under clause (cc) of sub-section (2) and shall, subject to the other provisions of this section, have effect accordingly.

(2B) The power to make rules conferred by clause (cc) of sub-section (2) shall include-

(i) The power to give retrospective effect to such rules; and

(ii) The power to amend by way of addition, variation or repeal, the regulations and other provisions referred to in sub-section (2A), with retrospective effect, from a date not earlier than the twentieth day of June, 1979.

(2C) The provisions of clause (cc) of sub-section (2) and sub-section (2B) and any rules made under the said clause (cc)

shall have effect, and any such rule made with retrospective effect from any date shall also be deemed to have had effect from that date, notwithstanding any judgment, decree or order of any court, tribunal or other authority and notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or any other law or any agreement, settlement, award or other instrument for the time being in force.”

63 By virtue of sub-Section (2A), the regulations governing the terms and conditions of service of the employees and agents of LIC which were in force immediately before Amending Act 1 of 1981, are deemed to be rules made under clause (cc) of sub-Section (2) and have effect subject to the other provisions of the Section. By a deeming fiction of law, the regulations which were in existence on the date of the Amending Act in relation to the terms and conditions of service are given the status of rules framed under clause (cc) of sub-Section (2) of Section 48. The effect of sub-Section (2C) is that the provision of clause (cc) of sub-Section (2) and any rules made under it with retrospective effect, shall also be deemed to have had effect from that date notwithstanding any judgment, decree or order of any Court, tribunal or other authority and notwithstanding anything contained in the ID Act, or in any other law or any agreement, settlement, award or other instrument for the time being in force. The rules which are framed under Section 48(2)(cc) operate with a non-obstante clause which prevails, *inter alia*, notwithstanding anything contained in the ID Act. The vires of the Amending Act was upheld in a judgment of a three-judge Bench of this Court in **A V Nachane** (supra). Justice A C Gupta, speaking for himself and Justice R S Pathak (as the learned Chief Justice then was), repelled the challenge to the validity of the Amending Act based on Article 14 of the Constitution.

The Court also rejected the submission that sub-Section (2C), which was introduced into Section 48 by the Amending Act, suffered from the vice of excessive delegation.

While upholding the Amending Act, the Court held:

“8. The contention that Article 14 is infringed arises on the provision of sub-section (2-C) of Section 48 that any rule made under clause (cc) of sub-section (2) of that section touching the terms and conditions of service of the employees of the Corporation shall have effect notwithstanding anything contained in the Industrial Disputes Act, 1947. It is true that after rules are made regarding the terms and conditions of service, the right to raise an industrial dispute in respect of matters dealt with by the rules will be taken away and to that extent the provisions of the Industrial Disputes Act will cease to be applicable. It was argued that there was no basis on which the employees of the Corporation could be said to form a separate class for denying to them the protection of the Industrial Disputes Act. The reply on behalf of the Union of India and the Life Insurance Corporation was that the remuneration that was being paid to Class III and Class IV employees of the Corporation was far in excess of what was paid to similarly situated employees in other establishments in the public sector. Some material was also furnished to support this claim though that were certainly not conclusive. The need for amending the Life Insurance Corporation Act, 1956 as appearing from the preamble of the Amendment Act and the Ordinance is as follows: “... for securing the interests of the Life Insurance Corporation of India and its policy-holders and to control the cost of administration, it is necessary that revision of the terms and conditions of service applicable to the employees and agents of the Corporation should be undertaken expeditiously.” Referring to the preamble of the Act the Attorney-General appearing for the Union of India and the Corporation submitted that the problem of mounting cost of administration led to the making of the impugned law. He added that it was felt that no improvement in the situation was possible by the process of adjudication and a policy decision was taken that in the circumstances the proper course was legislation and that is why the Amendment Act was passed and the impugned Rules were framed. The learned Attorney-General submitted that it was for Parliament to decide whether the situation was remediable by adjudication or required legislation. According to him the Life

Insurance Corporation Act as amended and the Rules made after amendment placed the Corporation in the same position as other undertakings, that the advantages being enjoyed by the employees of the Corporation which were not available to similarly situated employees of other undertakings have been taken away removing what he described as discrimination in favour of the employees of the Life Insurance Corporation. We have already said that the material produced on behalf of the Union of India and the Corporation to show that the terms and conditions of service of the employees in several other undertakings in the public sector compared unfavourably to those of the Corporation employees was not conclusive. But the burden of establishing hostile discrimination was on the petitioners who challenged the Amendment Act and the Rules. It was for them to show that the employees of the Life Insurance Corporation and the employees of the other establishments to whom the provisions of the Industrial Disputes Act were applicable were similarly circumstanced to justify the contention that by excluding the employees of the Corporation from the purview of the Industrial Disputes Act they had been discriminated against. There is no material before us on the basis of which we can hold that the Amendment Act of 1981 and the Rules made on February 2, 1981 infringe Article 14. We do not think that on the facts of this case *Express Newspapers (Private) Ltd. v. Union of India* [AIR 1958 SC 578 : 1959 SCR 12 : (1961) 1 LLJ 339] , and *Moti Ram Deka v. General Manager* [AIR 1964 SC 600 : (1964) 5 SCR 683 : (1964) 2 LLJ 467] relied on by the petitioners, have any application.”

64 The Court, however, held that Rule 3 of the Life Insurance Corporation of India Class III and Class IV Employees (Bonus and Dearness Allowance) Rules 1981³⁷ could not nullify the effect of a writ issued by this Court in its earlier decision in **LIC v. D.J. Bahadur**³⁸, which directed LIC to give effect to the industrial settlement relating to bonus until superseded by a fresh settlement, award or legislation. Holding that the Amending Act of 1981 and the Bonus Rules were

³⁷ “**Bonus Rules**”

³⁸ (1981) 1 SCC 315

relevant legislation, the Court held that these would operative prospectively from the date of the publication of the rules. There was also a concurring opinion of Justice O Chinappa Reddy. While dealing with the constitutional validity under Article 14, the main judgment notes that after rules are made regarding the terms and conditions of service, the right to raise an industrial dispute in respect of matters dealt with by the rules is taken away and to that extent the provisions of the ID Act will cease to be applicable.

65 In the subsequent decision of another Bench of three-judges of this Court in **M Venugopal** (supra), the impact of the Amending Act of 1981 on the application of the ID Act came up for consideration. The services of the appellant, who was a probationary Development Officer in LIC, were terminated on his failure to fulfil the targets assigned. A writ petition challenging the termination was allowed by a Single Judge of the High Court on the ground that the termination amounted to a retrenchment within the meaning of Section 2(oo) of the ID Act, and that the termination was void due to the failure to comply with Section 25F. In appeal, the Division Bench held that as a result of clause (bb) which was introduced in Section 2(oo) from 18 August 1984, the termination of a probationer would not amount to a retrenchment within the meaning of Section 2(oo). Regulation 14(2) of the Staff Regulations was, as a consequence of Section 48(2A) as introduced by the Amending Act, deemed to be rules framed under Section 48(2)(cc). Clause (4) of Regulation 14 permitted LIC to discharge an employee during the period of probation. Before the introduction of clause (bb) in Section 2(oo) of the ID Act, there

were only three exceptions which excluded a termination of service from the ambit of retrenchment, namely:

- (i) Voluntary retirement;
- (ii) Retirement on superannuation; and
- (iii) Termination due to continued ill-health.

After the introduction of clause (bb), Parliament excluded from the purview of retrenchment, in addition, the following:

- (i) Termination as a result of the non-renewal of a contract of employment upon its expiry; and
- (ii) Termination of a contract under a stipulation in that behalf contained in the contract of employment.

It was held that in this case the termination of the services of the probationer was in terms of the contract of an employment in terms of the stipulation contained in Regulation 14, and hence non-compliance with Section 25F would not vitiate the orders of termination.

66 Justice N P Singh, speaking for the three-judge Bench, then went on to elucidate on the impact of Amending Act 1 of 1981, more particularly the insertion of clause (cc) into sub-Section (2) and the insertion of sub-Sections (2A), (2B) and (2C) in Section 48. The Court held that the ID Act and the LIC Act have both been framed by Parliament, with the amendments introduced from 31 January 1981 in Section 48

containing a non-obstante clause in sub-Section (2C) making the intent of Parliament “apparent and obvious”. The Court held:

“The framers of the Corporation Act through the amendments aforesaid have given the provisions of the Corporation Act an overriding effect over the provisions of the Industrial Disputes Act, so far as the provisions relating to the terms and conditions of employment, which are in conflict with the provisions of the Industrial Disputes Act are concerned. Unless the said attempt is held to be ultra vires being in conflict with any of the provisions of the Constitution it was open to the Parliament to treat the employees and agents of the Corporation as a separate class for purpose of fixing their terms and conditions of service.”

67 The Court held that earlier the employees were governed by the regulations framed by LIC under Section 49 as well as by the provisions of the ID Act. Hence, it was open to the workers to enforce their rights and remedies in terms of the regulations framed under the LIC Act or in accordance with the provisions of ID Act. However, after the amendments which were introduced by Parliament in Section 48, the employees of LIC would not be entitled to the protection of the ID Act to which they were entitled before the enforcement of the amendment. The Court held that the validity of the amendment had been upheld in the earlier decision in **A V Nachane** (supra), and concluded:

“14. The amendments introduced in Section 48 of the Corporation Act have clearly excluded the provisions of the Industrial Disputes Act so far as they are in conflict with the rules framed under Section 48(2)(cc). The result whereof will be that termination of the service of the appellant shall not be deemed to be a “retrenchment” within the meaning of Section 2(oo) even if sub-section (bb) had not been introduced in the said section. Once Section 2(oo) is not attracted, there is no question of application of Section 25-F on the basis of which

the termination of the service of the appellant can be held to be invalid. The termination of the service of the appellant during the period of probation is in terms of the order of appointment read with Regulation 14 of the Regulations, which shall be deemed to be now Rules under Section 48(2)(cc) of the Corporation Act.”

68 Therefore, in view of the amended provisions of Section 48(2A) and (2C), the termination of the service of the appellant was held not to amount to a retrenchment even when clause (bb) had not been introduced in Section 2(oo) of the ID Act. Since Section 2(oo) would anyways not stand attracted where the services of a probationer were terminated under Regulation 14(4) of the Staff Regulations which, deemed to be a part of the rules under Section 48(2)(cc), has an overriding effect over the ID Act and would prevail.

69 The above provisions of Section 48 were specifically placed before the two-judge Bench of this Court, as is evident from a bare reading of the judgment in **TN Terminated Employees Association** (supra). However, the Court declined to go into the submission based on the provisions of Section 48, holding that the Staff Regulations provided only two types of employment: (i) Regular; and (ii) Temporary. The Court held that employment in the capacity of *badli*/part-time workers was not provided in the Staff Regulations, and there was no specific nomenclature of that nature in the Staff Regulations. The decision of the two-judge Bench evidently does not notice either the judgment in **A V Nachane** (supra) or the decision in **M Venugopal** (supra), both of which have been delivered by three-judge Benches. They are binding precedents and could not have been brushed aside.

70 That apart, it becomes necessary at this stage to advert to the provisions of Regulation 8 of the Staff Regulations. Regulation 8(1) deals with temporary staff and is prefaced with a non-obstante provision. Clause (1) of Regulation 8 is an enabling provision empowering LIC to employ staff in Classes III and IV on a temporary basis, subject to such general or specific directions which may be issued by the Chairperson from time to time. Clause (2) of Regulation 8 stipulates that no person who is appointed under Regulation 8(1) is, only by reason of such appointment, to be entitled to absorption in the service of LIC or to claim preference for recruitment to any post. The expression “shall only by reason of such appointment be entitled to absorption” in this sub-clause (2) is crucial. What the expression postulates is that a person who is appointed on a temporary basis can neither claim an entitlement to absorption or a preference in recruitment merely by having been appointed on a temporary basis. In other words, Regulation 8(2) does not postulate an absolute bar to a claim for absorption but it stipulates that absorption cannot be claimed merely on the ground that a person was engaged on a temporary basis. Regulation 8(2), for instance, will not preclude a claim for absorption being made in terms of a scheme which is propounded by LIC, so long as the scheme contains provisions which facilitate absorption on stipulated terms and conditions. But the mere fact that a person is appointed in a temporary capacity by LIC, does not entitle such a person *ipso jure* to seek absorption merely by virtue of or only by reason of such an appointment.

71 The impact of the provisions of clause (cc) of sub-Section (2), sub-Section (2A) and sub-Section (2C) of Section 48 on the claims of the workers appointed after 4 March 1991 must now be considered. The workers who have worked as temporary, *badli* or part-time workers after 4 March 1991, seek to assert their claims on the basis of Section 18(3)(d) of the ID Act. Section 18 specifies the person on whom settlements and awards are binding. Section 18(3)(a) stipulates that a settlement or award would bind all the parties to the industrial dispute. Further, clause (d) specifies that where a party to the dispute is composed of workers, the settlement and award binds not only persons who are employed in the establishment to which the dispute relates on the date of the dispute but all persons who subsequently become employees in that establishment or a part of it. Section 18(3)(d), in other words, extends the applicability of a settlement or award beyond the workers who were engaged on the date of the dispute to all persons who subsequently become employees in the establishment. Regulation 8 of the Staff Regulation expressly permits the engagement of temporary workers and clause (2) contains a provision to the effect that a person who engaged under its clause (1) shall not, only by reason of such appointment, be entitled to absorption or to claim a preference for recruitment on any post. The effect of sub-Section (2A) of Section 48 is that Regulation 8 is deemed to be a rule which is framed under clause (cc) of sub-Section (2) of Section 48. Moreover, the provisions of Section 48(2C) postulate that a rule which is made under the clause shall have effect notwithstanding anything contained in the ID Act. Hence, the workers who have been recruited post 4 March 1991 cannot make a claim for absorption *ipso jure* under Section 18(3)(d) of the ID

Act, as a result of the overriding provision which is contained in sub-Section (2C) of Section 48.

K Structuring the Relief

72 For the reasons recorded above during the course of analysis, LIC as a statutory corporation is bound by the mandate of Articles 14 and 16 of the Constitution. As a public employer, the recruitment process of the corporation must meet the constitutional standard of a fair and open process. Allowing for back-door entries into service is an anathema to public service.

73 In structuring the relief in present proceedings, it is essential to recapitulate the key legal findings that will govern the determination of rights and equities:

(i) On 7 February 1996, a two-judge Bench of this Court in **LIC v. Their Workmen** (supra) had accepted the terms of compromise which was arrived at on 1 March 1989 between the management of LIC and eight Unions, and imposed them upon the ninth Union as well. In addition, the two-judge Bench of this Court had issued certain directions:

(a) LIC should exempt Class IV workers from a test and interview, if the management has the power to do so under the regulations/instructions governing their conditions of service; and

(b) In the event that the management of LIC does not possess such a power, the test to be prescribed for these workers would be of a lesser standard

compared to other applicants from the open market till the next regular recruitment;

(ii) On 23 October 1992, a three-judge Bench of this Court, while disposing of the civil appeals in **E Prabavathy** (supra), specifically accepted the scheme formulated by LIC for regularising the workers who were engaged on a temporary basis. The scheme was also specifically incorporated as a part of the order in the following terms:

“(a) All those temporary employees who have worked for 85 days in any two consecutive calendar years with the Life Insurance Corporation between 20th May 1985 upto date and who confirmed to the required eligibility criteria for regular recruitment on the dates of their initial temporary appointment will be permitted to complete for the next regular recruitment to be made by the Life Insurance Corporation after the regular recruitment for these posts currently scheduled for November, 1992.

(b) These candidates will be considered on their merits with all other candidates who may apply for such appointments, including those from the open market.

(c) These candidates will be given an age relaxation for applying for regular recruitment provided that they were eligible on the date of their first temporary appointment for securing regular appointment with the Life Insurance Corporation.

(d) If these candidates are otherwise eligible, they can apply for regular recruitment in the normal course. This regularisation will, in the circumstances, be by selection for appointment. We make the above clauses of the scheme as part of our order.”

The three-judge Bench in **E Prabavathy** (supra) held that the scheme proposed by LIC is reasonable and that: (a) the regularisation will be by

selection for appointment; and (b) the above clauses of the scheme would constitute a part of the order of this Court;

(iii) On 22 November 2001, a two-judge Bench of this Court in **G Sudhakar** (supra) directed that though the order dated 23 October 1992 in **E Prabavathy** (supra) applied to the workers of the Tamil Nadu division, the scheme would equally be applicable to the workers of all divisions of LIC in the country;

(iv) The judgment of the two-judge Bench of this Court dated 8 March 2015 in **TN Terminated Employees Association** (supra) failed to notice that as a result of the final order dated 7 February 1996 in **LIC v. Their Workmen** (supra), the Tulpule and Jamdar Awards had been substituted by the terms of compromise. The two-judge Bench of this Court overlooked the final order dated 7 February 1996 in **LIC v. Their Workmen** (supra) and while adverting only to the interim order dated 1 March 1989, it arrived at a palpably erroneous conclusion that the Jamdar and Tulpule Awards were still operative and binding; and

(v) Though the petition seeking review of **TN Terminated Employees Association** (supra) and the curative petition stand dismissed, LIC is confronted with a situation in which it is equally bound by the earlier decision of the three-judge Bench dated 23 October 1992 in **E Prabavathy** (supra), the judgment of the two-judge Bench dated 7 February 1996 in **LIC v. Their Workmen** (supra) dealing with the appeals arising out of the Tulpule and

Jamdar Awards and the judgment of the two-judge Bench dated 22 November 2001 in **G Sudhakar** (supra).

74 The position as it now stands, results in a palpable conflict between the two-judge Bench decision in **TN Terminated Employees Association** (supra) dated 18 March 2015 on the one hand and the earlier binding decision of a larger Bench in **E Prabavathy** (supra) on 23 October 1992 and of subsequent Benches. This conflict must be harmonised by taking recourse to the jurisdiction of this Court under Article 142 of the Constitution. In arriving at a conclusion, this Court finds that:

- (i) The remit of the CGIT which resulted in the Dogra Report was confined to the process of verification, as distinct from an adjudication of rights and liabilities;
- (ii) The Dogra Report is flawed because:
 - (a) The report failed to carry out an accurate verification of only those Class III workers who had put in at least 85 days of work in a period of two years and Class IV workers who had put in 70 days of work in a period of three years;
 - (b) The lists which are appended to the report contain patent inconsistencies and errors as a consequence of a failure to carry out an adequate verification; and
 - (c) The report accepted the claims for absorption of those workers who were specifically governed by the decision of this Court in **E Prabavathy** (supra), in spite of an express stipulation to the contrary in the order of this

Court dated 23 October 1992 as well as in paragraph 75 of the Srivastav Award;

- (iii) 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 which 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**³⁹.

75 The dispute is now of an antiquity tracing back to nearly four decades. Finality has to be wrung down on the dispute to avoid uncertainty and more litigation. Nearly thirty-one years have elapsed since 1991. We have come to the conclusion that the claims of those workers who are duly found upon verification to meet the threshold conditions of eligibility should be resolved by the award of monetary compensation in lieu of absorption, and in full and final settlement of all claims and demands. Thus, this Court directs the following:

- (i) A fresh verification of the claims of workers who claim to have been employed for at least 70 days in Class IV posts over a period of three years or 85 days in Class III posts over a period of two years shall be carried out;

³⁹ (2006) 4 SCC 1

- (ii) The verification shall be confined to persons who were working between 20 May 1985 and 4 March 1991;
- (iii) All persons who are found to be eligible on the above norm shall be entitled to compensation computed at the rate of Rs 50,000 for every year of service or part thereof. The payment of compensation at the above rate shall be in lieu of reinstatement, and in full and final settlement of all claims and demands of the workers in lieu of regularisation or absorption and notwithstanding the directions issued by this Court in **TN Terminated Employees Association** (supra);
- (iv) In carrying out the process of verification, the Committee appointed by this Court shall not be confined to the certified list before the CGIT and shall consider the claims of all workers who were engaged between 20 May 1985 and 4 March 1991;
- (v) For the purpose of verification, LIC shall make available all the records at the Divisional level to the Committee appointed by this Court;
- (vi) It will be open to the workers concerned or, as the case may be, the Unions and Associations representing them, to make available such documentary material in their possession for the purpose of verification;
- (vii) The process of verification shall be carried out independently without regard to the Dogra Report, which is held to be flawed;
- (viii) The payment of compensation in lieu of reinstatement shall be effected by LIC within a period of three months from the date of receipt of the report of verification by the Committee; and

(ix) The task of verification shall be carried out by a Committee consisting of:

(a) Mr Justice P K S Baghel, former Judge of the Allahabad High Court; and

(b) Shri Rajiv Sharma, former District Judge and member of the UPHJS.

LIC shall provide all logistical assistance to the Committee and bear all expenses, including secretarial expenses, travel and incidental expenses, as well as the fees payable to the members of the Committee. Justice P K S Baghel shall fix the terms of remuneration payable to the members of the Committee.

76 The Miscellaneous Applications and the Writ Petitions shall be governed by the above directions and are disposed of in the above terms.

77 Pending application(s), if any, shall stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Surya Kant]

.....J.
[Vikram Nath]

**New Delhi;
April 27, 2022**