A TAMILNADU TERMINATED FULL TIME TEMPORARY LIC EMPLOYEES ASSOCIATION

v.

LIFE INSURANCE CORPORATION OF INDIA & ORS.

B (Civil Appeal No.6950 of 2009 etc.)

MARCH 18, 2015

[V. GOPALA GOWDA AND C. NAGAPPAN, JJ.]

C *Industrial Disputes Act, 1947 – ss. 19(6), s.12 rw s. 18(3), 2(ra), 36A – Industrial dispute between workmen and management of the Corporation – Workmen rendering service to the Corporation in the perennial nature of work between 01.01.1982 to 20.05.1985 – Clam for absorption as* D *regular and permanent service employees in their respective posts – Award passed by Justice R.D. Tulpule and the same was clarified by Justice S.M. Jamdar upon reference made by Central Government u/s. 36A that the Award directs absorption of workmen and does not mean recruitment –* E *Aggrieved thereagainst, SLP filed by Corporation – Disposal of SLP, in view of the compromise between the parties – Management and members of eight out of nine workmen Unions permitted to implement the terms of compromise without any prejudice to the rights and obligations of the* F *members of other Union – Claim of similarly placed workmen appointed by Corporation as temporary, badli and part-time workmen after 20.5.1985 disputed by Corporation – Reference of industrial dispute to CGIT – CGIT in terms of Award by Justice R.D. Tulpule and Justice S.M. Jamdar,* G *passed directions to the Corporation for their absorption in their respective posts –Single Judge set aside the Award passed by CGIT in relation to the concerned workmen – Division Bench of the High Court upheld the same – Held: It* H *is clear from the order passed in SLP that the award by Justice*

R.D. Tulpule and Justice S.M. Jamdar was neither set aside by the Court nor substituted the compromise terms in the place of the Award except the order passed in SLP – CGIT rightly adjudicated the industrial dispute referred to it – CGIT has rightly overridden the compromise arising out of SLP and passed the Award in favour of the concerned workmen – Further, the Awards passed by NIT is binding upon the Corporation till it is substituted by another Award or replaced by another settlement in relation to the service conditions of the workmen of the Corporation in accordance with law as provided u/s. 12 read with s.18(3) or another Award that is required to be passed by the Jurisdictional CGIT in relation to the subject matter after the Awards which are in operation are terminated by either of the parties as provided u/s. 19(6) – Thus, the judgment passed by the High Court is set aside and Award of CGIT is restored.

Allowing the appeals, the Court

HELD: 1.1 From the perusal of the order of this Court in SLP 14906 of 1988, nowhere it has been stated in the terms of the compromise between the parties that the Award of Justice R.D. Tulpule which was clarified upon reference made by the Central Government under Section 36A of the Industrial Disputes 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 passed in SLP. 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

A been substituted by terms and conditions of the compromise. The Award of Justice R.D. Tulpule reiterated by way of clarification in the Award passed by Justice Jamdar in the dispute subsequently has been operative even after the compromise arrived at between
B the parties to the compromise in the SLP before this Court. Therefore, the submission 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 concerned workmen is not both
C factually and legally correct. The submission is not tenable in view of the categorical statement made by this Court in its orders passed in SLP wherein, this Court has permitted the management and members of the said
D 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. This Court in the order passed in the
E said SLP has made it very clear that the said compromise entered into between unions therein, but it does not prejudice the rights and contentions of the concerned workmen whose disputes are in relation to their absorption in their respective posts who were appointed
F after 20.05.1985. Further, even if some of the workmen are bound under the said compromise that arose out of SLP, this in no way deters their right to raise the industrial dispute and get the same adjudicated vide order of reference by the appropriate Government to the CGIT.
G The Award of the 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 the CGIT Award was passed after rightly appreciating
H the points of dispute referred to it and on the merits of

the case. The Industrial Court while adjudicating an industrial dispute has the right to override contracts and create rights which are opposed to contractual rights. The CGIT rightly adjudicated the industrial dispute referred to it by the Central Government at the instance of the concerned workmen on the points of dispute, on the basis of pleadings and evidence on record and legal principles laid down in the Awards passed by the NIT. The CGIT has rightly overridden the compromise arising out of SLP and passed the Award in favour of the concerned workmen. [Para 25] [833-B-H; 834-A-H; 835-A; 837-D]

1.2 The Award of Justice Tulpule reiterated by way of clarification Award by Justice Jamdar are still operative as the same are not terminated by either of the parties as provided under Section 19(6) of the Act. The compromise between the parties in the SLP and the Scheme formed in *E. Prabhavathy & Ors.* and *G. Sudhakar & Ors.*case do not amount to substitution of the Awards passed by Justice R. D. Tulpule and by Justice S. M. Jamdar. Hence, in view thereof, the submissions made by the amicus curiae, in justification of the Award passed by the CGIT based on the terms and conditions laid down in the Awards passed by the NIT (by Justice Tulpule and Justice Jamdar) in favour of the workmen for absorption as they have been rendering their service to the Corporation in the perennial nature of work for a number of years, the High Court was not justified in interfering with the said Award passed by the CGIT. The impugned judgment and order of the High Court is contrary to the Awards, the provisions of the Industrial Disputes Act and the law laid down by this Court. The Awards passed by the NIT is binding upon the Corporation till it is substituted by another Award or

A replaced by another settlement in relation to the service conditions of the workmen of the Corporation in accordance with law as provided under Section 12 read with Section 18(3) of the Act or another Award that is required to be passed by the Jurisdictional CGIT in B relation to the above subject matter after the Awards which are in operation are terminated by either of the parties as provided under Section 19(6) of the Act. Until then, the said Award passed by the NIT will still be operative in law. Therefore, the same has been rightly C applied to the fact situation on hand in the Award passed by the CGIT and it could not have been set aside by the High Court. Thus, the Single Judge erroneously set aside the Award passed by the CGIT and the said judgment of the Single Judge was erroneously upheld by the Division D Bench. Hence, the same are liable to be set aside. [Para 27] [842-D-H; 843-A-C]

1.3 This is a clear case of unfair labour practice as defined under Section 2(ra) of the Act which is statutorily E prohibited under Section 25T of the Act and the said action of the Corporation amounts to penalty under Section 25U of the Act. Thus, the findings and reasons recorded in the Award of the CGIT in answering the points of dispute referred to it by Central Government in favour F of the concerned workmen is legal and valid. The High Court erred in not noticing the said important, relevant, factual and legal aspect of the case of the concerned workmen and erroneously set aside the Award of the G CGIT passed in favour of the concerned workmen in exercise of its judicial Review power. [Para 28] [843-F-H; 844-A]

1.4 Since the Award passed by the CGIT is legal and valid, it is restored and implemented by the H

Corporation by absorbing the concerned workmen in the permanent posts and if they have attained the age of superannuation, the Corporation would be liable to pay all consequential benefits including monetary benefits taking into consideration the pay scale and revised pay scale from time to time by the Corporation. [Para 29] [845-B-C]

LIC of India & Ors. v. G. Sudhakar & Ors. **(2001) 2 Suppl. JT 143**; *Secretary, State of Karnataka v. Uma Devi* **2006 (3) SCR 953: (2006) 4 SCC 1**; *The Life Insurance Corporation of India v. D. J. Bahadur & Ors.* **1981 (1) SCR 1083: (1981) 1 SCC 315**; *Bharat Bank Ltd. v. Bharat Bank Employees Union* AIR **1950 SC 188: 1950 SCR 459**; *Herbertsons Ltd. v. Workmen of Herbertsons Ltd.* **1977 (2) SCR 15 : (1976) 4 SCC 736**; *Transmission Corporation, A.P. Ltd. v. P. Ramachandra Rao* **2006 (1) Suppl. SCR 18: (2006) 9 SCC 623**; *ITC Ltd. Workers' Welfare Association v. ITC Ltd.* **2002 (1) SCR 711: (2002) 3 SCC 411**; *Jaihind Roadways v. Maharashtra Rajya Mathadi Transport & General Kamgar* ***Union*** **2005 (3) Suppl. SCR 820: (2005) 8 SCC 51**; *Harjinder Singh v. Punjab State Warehousing Corporation* **2010 (1) SCR 591: (2010) 3 SCC 192**; *Jasmer Singh v. State of Haryana & Anr.* **2015(1) SCALE 360 – referred to.**

Case Law Reference

(2001) 2 Suppl. JT 143	**Referred to.**	**Para 14**
2006 (3) SCR 953	**Referred to.**	**Para 17**
1981 (1) SCR 1083	**Referred to.**	**Para 18**
1950 SCR 459	**Referred to.**	**Para 19**
1977 (2) SCR 15	**Referred to.**	**Para 20**

A	**2006 (1) Suppl. SCR 18**	**Referred to.**	**Para 20**
	2002 (1) SCR 711	**Referred to.**	**Para 20**
	2005 (3) Suppl. SCR 820	**Referred to.**	**Para 20**
B	**2010 (1) SCR 591**	**Referred to.**	**Para 28**
	2015(1) SCALE 360	**Referred to.**	**Para 28**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6950 of 2009.

C From the Judgment and Order dated 21.03.2007 of the High Court of Delhi at New Delhi in LPA No. 690 of 2004.

WITH

D C.A. Nos. 6951, 6952, 6953, 6954 and 6956 of 2009.

M. N. Krishnamani, V. Kanagaraj, M. A. Chinnasamy, V. Senthil Kumar, Asha Jain Madan, Mukesh Jain, Amit Mishra, S. Nanda Kumar, R. Satish Kumar, V. N. Raghupathy, B. K. Pal, Kawaljit Kochar, Kusum Chaudhary, Atul Bandhu, E Varun Kumar, Bankey Bihari Sharma, Chandan M., M. Vijay Bhaskar, Ashok Panigrahi for the Appellants.

Kailash Vadsev, Ashok Panigrahi, Santosh Kumar, Ashmi Mohan, Shreyans Singhvi, M. Vijaya Bhaskar for the F Respondents.

The Judgment of the Court was delivered by

V. GOPALA GOWDA, J. 1. This group of appeals G has been filed by various appellant-Associations questioning the correctness of the common impugned judgment and order dated 21.03.2007 passed in Letters Patent Appeal No. 690 of 2004 along with batch matters by the Delhi High Court in dismissing the appeals of the appellant/concerned workmen H by issuing certain directions contained at para 20(a) of the said impugned judgment in affirming the judgment and order

of learned single Judge in allowing the Writ Petitions filed by the respondent-Life Insurance Corporation of India (for short "the Corporation"). The appellant-Associations have filed these appeals urging various relevant facts and legal contentions with a prayer to restore the Award dated 18.06.2001 passed by the Central Government Industrial Tribunal, New Delhi (for short "the CGIT") in I.D. No.27 of 1991.

2. The facts of the case are stated here under for the purpose of appreciating the factual and rival legal contentions urged on behalf of the parties with a view to ascertain whether the appellants/concerned workmen are entitled to the relief as prayed for in these appeals:-

The concerned workmen are the members of the appellant-Associations, Federation of Employees Association, Workers Association and other concerned individual workmen who were working in the branches of the Corporation at various places in the country have raised the existing industrial dispute between the concerned workmen and the management of the Corporation regarding their absorption as regular and permanent service employees in their respective posts of the Corporation. The concerned workmen in all these appeals have been working as temporary, badli and part-time workmen claiming that they have been appointed by the management of the Corporation on daily wage basis against the leave vacancies and other vacancies of its employees in Class III and IV posts in various branch offices and Divisions of the Corporation. Their claim for regularisation were based on two Awards passed of the National Industrial Tribunal (for short 'the NIT') (i) the Award passed by Justice R.D. Tulpule on 17.04.1986 with regard to absorption of similarly placed workmen by the Corporation who had been working on temporary/badli/part-time basis in Class III and IV category posts in their respective branches of the Corporation and (ii)the

A Award passed by Justice S.M. Jamdar dated 26.08.1988, in pursuant to the reference made by the Ministry of Labour, Government of India, under Section 36A of the Industrial Disputes Act, 1947 (for short 'the Act'), where the NIT clarified and affirmed the Award dated 17.04.1986 passed by Justice
B R. D. Tulpule.

The present dispute that arose between the concerned workmen and the Corporation was referred to the CGIT by the Ministry of Labour, Central Government, in exercise of its
C statutory power under Section 10(1)(d) read with Section 2A of the Act vide Order No. L-17011/107/90-IR-B(II) dated 04.03.1991 on the basis of the report of the Conciliation Officer for its adjudication on the following question :-

D "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 20.5.1985 is justified, if not, to what relief the workmen are entitled?"

E

3. The said industrial dispute has been raised by the Associations, Federation of workmen and concerned workmen in their individual capacity which was supported by the Unions and Associations of these workmen of the divisions and zones
F of the Corporation across India and workmen who have represented their case on individual basis. Apart from the said Unions, Associations, Federation of some of the workmen from Tamilnadu Terminated Full Time Temporary LIC Employees Association and E. Prabhawati and Ors. had also been
G impleaded as parties in the dispute before the CGIT. E. Prabhawati and Ors. were impleaded vide order dated 01.12.1993 and The Tamil Nadu Terminated Temporary Full Time LIC Association was impleaded in the pending reference case vide order dated 06.04.1995.

H

4. The Corporation is a creature of the Statute, namely, Life Insurance Corporation Act, 1956 (for short "the LIC Act"). Section 48 of the LIC Act enables the Central Government to make rules to carry out the performance of the Act by notification in the official gazette. Section 49(1) of the LIC Act empowers the Corporation to make regulations not inconsistent with the provisions of the LIC Act and the rules made there under provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of the LIC Act with the previous approval of the Central Government by notification in the gazette of India. Section 49(2) of the LIC Act lists certain matters for which Regulations may be made without prejudice to the generality of the power conferred by sub-section (1). The LIC Act was amended by the Amendment Act 17 of 1957 with retrospective effect by incorporating sub-clause (bb) of sub-section 2 of Section 49 of the Amended Act, 1957 which was omitted later by Act 1 of 1981 (w.e.f. 31.1.1981) which provides for terms and conditions of service of the persons who have become employees of the Corporation under its Section 11 sub-Section (1) of the Act. By the authority vested in the Corporation under clause (bb) of sub-Section (2) of Section 49 of the amended Act, the Corporation framed Regulations defining the terms and conditions of service of the staff of the Corporation known as LIC of India (Staff) Regulations, 1960 (for short "the Staff Regulations, 1960") which was notified in the Gazette of India No. IV dated 23.7.1960 and came into force with effect from 1.7.1960. It is pertinent to note that although according to the Staff Regulations, 1960 there are only two types of employment that have been provided for in the Regulations (i) regular and (ii) temporary. The employment in the capacity of badlis, part-time is not provided thereunder. There is no specific nomenclature in the Staff Regulations, 1960, in this regard, but the said type of employment is prevalent in the Corporation both in the Center

A and also in various Divisions, Zonal offices throughout India. The concerned workmen have been continuously working in different capacities such as peons, hamals, watchman-cum-pump man, lift man, house attendants, sweepers, cleaners, assistant typist etc. on daily wage basis against permanent
B and other vacancies during that period.

5. Between the years 1981-85, a large number of employees of Class III and IV posts were employed by the Corporation in the capacity of badlis, temporary and part-time
C workers. Their wage, conditions for the absorption into the regular cadre and other conditions of service were the subject matter of the Industrial Dispute. Thus, the reference was made in this regard to the National Industrial Tribunal as reference No. NTB-I of 1985. At the initial stage, the Western Zone
D Insurance Employees Association, Bombay and the Central Zone National Life Insurance Corporation Employees Association, Kanpur were the only parties to the reference besides the Corporation. Later on, all the Unions of all the Regions and the Zones in the country joined as parties and
E filed their respective claim statements before the NIT. During the course of said proceedings an interim Award was passed by the National Industrial Tribunal on the prayer of the workmen, restricting the Corporation from recruiting or absorbing any
F person in the posts without prior permission of the Tribunal. According to the interim Award passed by the NIT, the Corporation was restrained from making any new appointments except where persons had to be appointed over and above the then existing vacancies against which posts
G the badli, temporary or part-time workmen who had been working or had worked with the Corporation and those who would be concerned in the reference had to be appointed from amongst the badlis, temporary or part-time workmen against any vacancy continued, provided an undertaking is given to
H the Corporation by such workmen stating that no benefit would

be claimed. A

6. After adjudication of the said Industrial Dispute between the parties, the Award was passed by Justice R.D. Tulpule on 17.4.1986. The said Award was based on the suggestions invited both from the workmen and from the B management of the Corporation. The parties had given the mandate to the NIT to base its Award on any of the suggestions given by the parties after making necessary modifications.

7. In the Award dated 17.04.1986, it was held that only C those workmen who had worked in the Corporation during the period January 1, 1982 to May 20, 1985, the date of the reference was to be considered as eligible for absorption. The Award held that the workmen claiming absorption in Class III posts should have worked for 85 days in a period of two D calendar years and the workman claiming absorption in Class IV post should have worked for 70 days in a period of three calendar years. It was further held by the NIT that the calculation of the number of days of work should be up to the date of reference. The Corporation was further directed to appoint a E screening committee to consider suitability and desirability of such eligible workmen for their absorption in the posts of the Corporation. It was also directed by the NIT to the Corporation that the workmen considered to be suitable and desirable for the absorption should be absorbed against vacancies which F existed in the Corporation as on 31.3.1985 and those which may arise subsequently. The Corporation was also directed not to recruit outsiders in a particular Division till such lists of workmen were exhausted. Directions given in the Award on the question of absorptions have been mentioned in paras 40 G to 60 and 66 of the Award of Justice R.D. Tulpule.

8. Aggrieved by the said Award of Justice R.D. Tulpule dated 17.4.1986, the Corporation filed Writ Petition No. 1801 of 1986 before the High Court of Judicature of Bombay H

A challenging its legality. The Writ Petition of the Corporation was dismissed by the High Court vide order dated 14.8.1986, but at the same time, the High Court gave a certificate to the Corporation for seeking clarification of the said Award under Section 36A of the Act. In compliance with the Award dated
B 17.04.1986, the Corporation, while interpreting the Award with respect to the absorption of the workmen as recruitment, had issued six circulars commencing from 17.9.1986 to 25.2.1987. The Workers Union and Associations disputed the aforesaid instructions issued by the Corporation. Therefore, an Industrial
C Dispute was raised once again. The Central Government in the Ministry of Labour made a reference under Section 36A of the Act to the NIT being presided over by Justice S.M. Jamdar and the same was registered as NTB(1) of 1987, which reads
D thus :-

> "Can the Award dated 17.4.1986 with special reference to paragraphs 44, 45, 46, 48, 49, 51, 52, 54, 55, 56, 57, 60, 64 and 66 and the interim order dated 14.3.1986 be
E interpreted to mean that the Central Office of the Life Insurance Corporation of India is empowered to issue instructions/guidelines as contained in their circular issued in this behalf to implement the directions of the Award. If not, what could be the correct interpretation of
F 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 in mean "recruitment".

9. During the course of the hearing of the said reference,
G an interim order was passed by the NIT restraining the Corporation to make any recruitment from the open market during the pendency of the proceedings. The NIT, after hearing the parties and examining the points of dispute, answered the
H term of reference and gave its own interpretation of the earlier

Award passed by Justice R.D. Tulpule holding that the observations contemplated by the earlier Award did not mean recruitment. An Award dated 26.8.1988 was passed accordingly by Justice S.M. Jamdar clarifying the Award passed by Justice Tulpule that absorption of workmen does not mean recruitment.

10. Aggrieved by the said Award, the Corporation preferred SLP No. 14906 of 1988 titled ***The Management of Life Insurance Corporation of India v. Their Workmen*** before this Court urging various legal contentions. It is the case of the Corporation that during the course of the said SLP, a compromise was entered into between the Corporation and 8 out of the 9 Unions of the above SLP. Accordingly, this Court passed an order dated 1.3.1989 on the basis of the said compromise. The terms and conditions of the said compromise between the parties therein will be extracted in the reasoning portion of this Judgment.

11. In pursuant to the said compromise between the parties in the SLP, as directed by this Court, the Corporation gave appointments to a large number of such workmen working on temporary, badli and part-time basis to the posts in the Class III as well as Class IV in various Divisions of the Corporation. The said appointments were given to the persons recruited on temporary basis between 1.1.1982 to 20.5.1985. Thereafter, the employees who were employed as temporary, badli and part-time workers after 20.5.1985 raised the demand for their absorption and regularisation of their service as permanent employees. When their demands were not accepted by the Corporation, several writ petitions in this respect were filed before the High Court of Madras between the years 1989 to 1991. The writ petition No. 10367 of 1989 filed between the Terminated Full Time Temporary LIC Welfare Association and Senior Divisional Manager, LIC, Khanjawar,

A along with 18 other writ petitions were listed for hearing before the full bench of the High Court of Madras. After hearing the parties of all the writ petitions, the High Court dismissed the same which decision is reported in 1993 (1) LLJ 1030.

B 12. Being aggrieved by the said judgment, SLP (C) Nos. 10393-10413 of 1992 titled ***E. Prabhawati and Ors.*** *v.* ***LIC of India & Ors.*** were filed before this Court. In the said SLPs, on the direction of this Court, the Corporation framed a Scheme for the regularization of the employees in their service C who were granted *ad-hoc* appointments for 85 days at intervals from time to time and placed the same before this Court. After hearing the parties, this Court by means of an interim order dated 23.1.1992 found the Scheme to be reasonable and approved clauses (a) to (d) of paragraph 1 of the said Scheme D and the Corporation was directed to proceed to regularize the employees eligible in their service in accordance with the said Scheme.

13. It is also pertinent to note that during the pendency E of the writ petitions before the High Court of Madras, the industrial dispute that arose between the concerned workmen and the Corporation in these appeals were referred to the CGIT by the Ministry of Labour vide order dated 4.3.1991. Further, during the continuance of the proceedings of the present F reference E. Prabhawati and Ors. their impleadment application was allowed vide order dated 1.12.1993. However, they did not implead in the above dispute proceedings.

14. Thereafter, G. Sudhakar and Ors. (similarly placed G employees) approached the High Court of Andhra Pradesh seeking relief for the absorption in their employment of the Corporation in the Divisions where they were working. The High Court of Andhra Pradesh after hearing the parties gave directions to the Corporation to frame a Scheme on par with H the E. Prabhavathy Scheme for regularisation of such

workmen. Aggrieved by the said order, the Corporation filed C.A. No. 2104 of 2000 titled ***LIC of India & Ors. v. G. Sudhakar & Ors.***[1] before this Court which was disposed of by observing that the Scheme as has been passed in the case of ***E. Prabhavati & Ors.*** case (supra) will also be applicable to the case of ***G. Sudhakar and Ors***.

15. The CGIT conducted an inquiry to answer the points of disputes arising from the industrial dispute raised by the concerned workmen in this case. The CGIT on the basis of the pleadings, evidence on record and also on the basis of the Award passed by Justice R.D. Tulpule which was clarified in the Award passed by Justice S.M. Jamdar referred to supra, held that the same are applicable to the concerned workmen in this dispute. Accordingly, the CGIT passed an Award dated 18.06.2001 in terms of Justice R.D. Tulpule and Justice S.M. Jamdar, giving directions to the Corporation for their absorption in their respective posts.

16. The Corporation being aggrieved by the Award passed by the CGIT filed Civil Writ Petition No. 4346 of 2001 before the Delhi High Court placing strong reliance upon the order passed by this Court wherein it accepted the terms and conditions of the compromise arrived at between the parties in the ***The Management of Life Insurance Corporation of India v. Their Workmen*** (SLP No 14906 of 1988) referred to supra which was filed by the Corporation against the Awards of the NIT by Justice R.D. Tulpule and Justice S.M. Jamdar Awards. Further, reliance was placed on ***E. Prabhavati & Ors.*** case (supra) which was disposed of as per the Scheme worked out by the Corporation pursuant to the orders of this Court in that case. The said Scheme was as per the decision in the case of ***State of Haryana & Ors. v. Piara Singh & Ors.*** wherein, this Court indicated how regularisation of *ad-*

[1] (2001) 2 Suppl. JT 143

A *hoc*/temporary employees in the Government and Public Sector Undertakings should be effected. Thereafter, the case of ***G. Sudhakar & others*** (supra) was also disposed of as per terms in the E. ***Prabhavathi*** Scheme. Further, it was contended by the Corporation before the learned single Judge
B of the High Court that the CGIT without accepting the said order/ Scheme which is binding upon it under Article 141 of the Constitution of India has erroneously answered the points of dispute in favour of the concerned workmen. The said contention of the Corporation was opposed by the Association,
C Unions, the Federation and concerned workmen involved in these appeals. The learned single Judge accepted the contention raised by the Corporation by relying on decisions rendered by this Court in the case of ***E. Prabhavathy & Ors.*** (supra) and ***G. Sudhakar & Ors.*** (supra) and thereafter, held
D that on plain reading of the above said decisions of this Court, the term of reference before the CGIT stood answered when this Court decided ***E. Prabhavathy & Ors.*** (supra), which again was concluded and reiterated in the decision of this Court
E in ***G. Sudhakar & Ors.*** (supra). Consequently, the Award passed by the CGIT in relation to the concerned workmen of these appeals was set aside by the learned single Judge by assigning his reasons in judgment and order passed by him.

F 17. Aggrieved by the Judgment and order passed by the learned single Judge of the High Court, the concerned workmen challenged the same by filing L.P.A. No. 690 of 2004 and other connected appeals before the Division Bench of the Delhi High Court *inter alia* urging that the findings and
G reasons recorded by the learned single Judge in his judgment are not only erroneous in law but also suffer from error in law as the learned single Judge has accepted the binding settlement between the Corporation and the similarly placed workmen. It was further contended that Section 18 (3) and
H Section 19 (3) & (6) of the Act were not properly examined

keeping in mind that the said settlement arose out of the Awards of the NIT being challenged before this Court in SLP No. 14906 of 1988, however this Court at no point set aside the NIT Awards in spite of the compromise arrived at between the parties therein, therefore, the learned single Judge failed to consider that the said Awards were still binding upon the Corporation. Therefore, it was contended by the concerned workmen before the Division Bench of the High Court of Delhi that the learned single Judge was not right in setting aside the Award passed by the CGIT in favour of the concerned workmen involved in these appeals and prayed for setting aside the same by allowing the Letters Patent Appeals. The Division Bench of High Court of Delhi examined the points of dispute arising out of the Industrial Disputes raised by the workmen of the Corporation, facts and rival legal contentions and the correctness of the finding recorded by the learned single Judge in setting aside the Award of the CGIT. It was held by the Division Bench that the appointment letters issued to the various employees specifically stipulated that their appointments are temporary for a specified period and the same would be terminated on the expiry or the period specified therein and that during the period of the temporary appointment none of the provisions of the LIC (Staff) Regulations, 1960 would apply. It was further held that the appellants had accepted the aforesaid terms of appointment and therefore, they cannot raise a claim for their regularisation or automatic absorption in the permanent posts. It was further held that this Court in the decisions of ***E. Prabhavathy & Ors.*** and ***G. Sudhakar & Ors.*** (supra) also declined regularisation of workmen and directed the Corporation for conducting selection process for regular appointment and that none of the appellants as on the date of raising of the industrial dispute were continuing in their respective posts as their services stood terminated on the expiry of the tenure of their temporary employment and even if

A B C D E F G H

A they had continued to serve it was because of orders passed by various courts. It was further held by the Division Bench that the reliance placed on paragraph 53 of the ***Secretary, State of Karnataka*** *v.* ***Uma Devi***[2] by the appellants was misplaced as the ratio laid down in the said case is not applicable to the B facts of the present case under any circumstance. It was further held that in the present cases, there is a specific rule which provides as to how recruitment has to be made to the vacant posts on regular basis, and the workmen herein were recruited under different set of instructions altogether which were meant C for engagement of workmen on temporary basis and permit recruitment of temporary staff who would not be entitled for absorption in the posts of Class III and IV of the Corporation. Therefore, the Division Bench held that none of the cases of the appellants would attract for issuance of the direction to the D Corporation to absorb them automatically in their posts and dismissed the Letter Patent Appeals filed by the concerned workmen. Hence, the present appeals urging various legal grounds.

E 18. The correctness of the said findings of the impugned judgment and order passed by the Division Bench are challenged by the learned counsel appearing on behalf of the concerned workmen in these appeals *inter alia,* contending F that the Award of the CGIT passed after adjudication of points of dispute was in relation to the concerned workmen who have been appointed by the Corporation as temporary, badli and part-time workmen after 20.5.1985. These workmen have been appointed by following the procedure under the LIC (Staff) G Regulations issued by the Corporation from time to time and they have been discharging permanent nature of work against permanent and regular vacancies as temporary, badli and part-time workmen in the various offices, Zones and Divisions of the Corporation across India. Further, it is contended that the H Awards passed by the NIT by Justice R.D. Tulpule, the same

[2] (2006) 4 SCC 1

being clarified and affirmed by Justice S.M. Jamdar vide reference under Section 36A of the Act, were passed after determination of the points of dispute in relation to the industrial dispute raised by similarly placed workmen of the Corporation who were appointed and had been working on such permanent and regular posts on temporary, badli and part-time basis in Class III and IV categories of employees of the Corporation between 01.01.1982 to 20.05.1985. Therefore, the NIT Awards clarified that those similarly placed workmen were entitled for absorption in terms of the direction given in the Award of Justice R.D. Tulpule which was clarified subsequently by the Award passed in 1988 by Justice S. M. Jamdar. Of course, the said Awards by the NIT were challenged before this Court in the SLP No. 14906 of 1988 at the end of which eight out of nine unions therein entered into a compromise with the Corporation and the same was permitted by this Court by way of an interim measure without any prejudice to the rights and contentions of the members of the other Union who had not entered into such compromise. Accordingly, the said SLP was disposed of by this Court vide order dated 01.3.1989. Further, it is contended by the learned counsel that the CGIT has rightly placed reliance upon the terms and conditions of the Awards of Justice Tulpule and Justice Jamdar. Though the said Awards were challenged before this Court and the matter was disposed of in terms of the compromise arrived at between the parties therein, the NIT Awards were not set aside or terminated by the Corporation or by any other Award or order passed by NIT or any other Court. Hence, the same will be operative and binding between the parties under Section 18(3)(d) read with Section 19 sub-section(3) & (6) of the Act. In support of their contention, reliance was placed upon the decision of ***The Life Insurance Corporation Of India v. D. J. Bahadur & Ors.***[3].

19. It is also contended by Mr. Shekhar Naphade, learned amicus curiae on behalf of the workmen that the

[3] (1981) 1 SCC 315

A industrial dispute was raised under the provision of Section 2(k) read with Section 10 and 12 of the Act by the concerned workmen who have been working as temporary, badli and part-time workmen in the posts of Class III and Class IV of the Corporation for their absorption in the permanent posts. The B said claim of the concerned workmen was disputed by the Corporation; the Central Government referred the existing industrial dispute to the CGIT for adjudication of the points of dispute as it has got the jurisdiction to adjudicate the said industrial dispute. He placed strong reliance upon Schedule C IV of the Act and invited our attention to Item No. 6 in Schedule II under which matters other than those specified in the III Schedule are within the jurisdiction of the Labour Court and also Item No. 11 of Schedule IV which provides for Conditions of Service for Change of which Notice is to be given by the D Corporation in case of any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, [not occasioned by the circumstances over which the employer has E no control]. Since the Corporation is a Statutory Body which has come into existence under the LIC Act, 1956, it is required to follow the provisions of the Act with regard to service conditions of the workmen, including better service conditions, absorption, regularisation etc. He has also placed reliance F upon the Item No. 10 of V Schedule to the Act, wherein it states that it is an unfair labour practice on the part of the employer to employ workmen as "badlis", casuals or temporaries and continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen and G the same is prohibited under Section 25T of the Act. Further, strong reliance was placed by him upon the provisions under Section 25T and 25U under Chapter VC of the Act, with regard to the Unfair Labour Practices on the part of the employer wherein it is stated that an employee or a workman and Trade H Union shall not commit any unfair labour practice in relation to

the matter as enumerated in the V Schedule referred to supra and further Section 25U of the Act contemplates that any person either employer or Trade Unions of Employers who commits unfair labour practice as enumerated in the V schedule shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to Rs.1,000/- or both. Therefore, it is contended that in the case on hand, the workmen concerned have been employed on temporary, badli and part-time basis for several years, depriving them of the privileges of permanent workmen which is a clear case of unfair labour practice on the part of the Corporation under Item 10 Schedule V, which is prohibited under Section 25T of the Act and the Corporation would be liable for penalty under Section 25U of the Act. Therefore, the CGIT has got ample power to adjudicate the existing industrial dispute between the parties on the basis of the points of dispute referred to it with respect to the claim raised by the concerned workmen. Further, in justification of the Awards passed by the NIT in giving direction to the Corporation to absorb similarly situated workmen from 01.01.1982 till 20.05.1985, strong reliance was placed by him upon the case of ***Bharat Bank Ltd. v. Bharat Bank Employees Union***[4] wherein, this Court discussed the powers of Industrial Tribunal to override the contracts. Therefore, the aforesaid Awards passed by the NIT are binding between the parties under Section 18(3) of the Act. The Awards passed by the NIT in a similar dispute are still operative as the same are not terminated by either of the parties as provided under Section 19(6) of the Act, even after the expiry of the period of operation under Section 19(3) of the Act, & therefore, the Awards shall continue to be operative & binding on the parties until a period of two months has elapsed from the date on which notice is given by the Corporation intimating its intention to terminate the Awards. He further contended that in the case on hand, no such notice is issued by either of the parties and

[4] AIR 1950 SC 188

A therefore the Awards are operative and binding in law upon the parties.

20. The aforesaid contentions, are rebutted by the learned senior counsel Mr. Kailash Vasdev, appearing on B behalf of the Corporation, placing strong reliance on a series of judgments of this Court to show that the compromise was entered into between the Corporation and 99% of the employees on behalf of the workmen involved in the SLP 14906 of 1988 filed by the Corporation questioning the C correctness of the Awards passed by Justice R.D. Tulpule and Justice S.M. Jamdar. Therefore, the said compromise is binding between the parties as provided under Section 18(3) of the Act. Further, he has urged that the case of ***D. J. Bahadur*** (supra), upon which reliance has been placed by the learned D counsel for the appellants, is sought to be distinguished by him by relying on paragraphs 43 and 47 of the said judgment in support of the case of the Corporation contending that the said decision does not render any assistance to the workmen in these appeals. He placed reliance on the decisions of this E Court in the case of ***Herbertsons***[5], ***Transmission Corporation, A.P. Ltd. v. P. Ramachandra Rao***[6], ***ITC Ltd. Workers' Welfare Association v. ITC Ltd.***[7] and ***Jaihind Roadways v. Maharashtra Rajya Mathadi Transport & General Kamgar Union***[8] to contend that the said Award of F Justice R.D. Tulpule and clarified by Justice S.M. Jamdar Award are replaced and merged with the compromise arrived at between the parties before this Court in SLP 14906 of 1988, and the said compromise is binding on the Corporation and G the parties to the compromise that Awards are not in operation, therefore, the CGIT has erred in placing reliance upon the same

[5] (1976) 4 SCC 736

[6] (2006) 9 SCC 623

[7] (2002) 3 SCC 411 H

[8] (2005) 8 SCC 51

to grant relief in favour of the workmen which has been rightly set aside by the High Court. It is further contended by him that in the SLP filed against the judgment of full Bench of the High Court of Madras by ***E. Prabhavati and Ors.***, wherein, the Scheme was framed by the Corporation in these cases on the direction of this Court, which was accepted by the parties and the Special Leave Petition was disposed of in the aforesaid terms by this Court by its order dated 23.10.1992. Further, it is contended that thereafter, the decision of the High Court of Judicature of Andhra Pradesh in the Writ Petition filed by ***G. Sudhakar and Ors.*** (supra) was also challenged by the Corporation before this Court and disposed of in the same in terms of the Scheme as in ***E. Prabhavathy & Ors***.(supra) case. Further, it is submitted that the Award of absorption of the concerned workmen passed by the CGIT has been rightly set aside by the learned single Judge and the said decision of the learned single Judge has been rightly affirmed in the judgment and order passed by the Division Bench of the Delhi High Court by giving cogent and valid reasons and therefore, the same does not call for interference by this Court in exercise of its Appellate Jurisdiction.

21. In view of the factual and rival legal contentions urged by the learned counsel on behalf of the parties and the amicus curiae, we have to answer the same by recording our reasons as to (i) whether the setting aside of the Award passed by the CGIT 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 S.M. Jamdar is justified, legal and valid?, (ii) whether the judgment and order of the learned single Judge being affirmed by the Division Bench of High Court in its judgment is legal and valid? and (iii) what Award/Order the appellants are entitled to in law?

We answer point (i) and (ii) together as the same are

A interrelated by assigning the following reasons-

22. Undisputedly, the concerned workmen in the above references before the CGIT have been working in different offices and Zones, Divisional offices of the Corporation in
B various posts namely peons, hamals, watchman-cum-pump man, lift man, house attendants, sweepers, cleaners, assistant typist etc in different parts of the country who were appointed by following the Rules and Instructions of the Corporation which were relevant at that point of time. The concerned workmen in
C industrial dispute referred to the CGIT have been discharging perennial nature of work against the regular permanent posts in the Corporation. The industrial dispute raised by similarly placed workmen, who were appointed between the period 01.01.1982 till 20.05.1985 was adjudicated on the points of
D dispute by the NIT with regard to the justification of absorption of the said workmen as permanent workmen in their respective posts by Justice R.D. Tulpule. The relevant portion of the Award is extracted as under for better appreciation of rival legal submissions made by the learned counsel on behalf of the
E parties with a view to examine the correctness of the findings recorded by the High Court:-

"65. In the light of the directions above with regard to observation and creation of additional post by the
F Corporation I do not think that there would be any occasion in future for the corporation to employ workman in the temporary and badlee categories existing for the occasional and temporary increase in work which necessitate employment of temporary staff in all
G probability would be only amongst class III cadre, in which case there could be no occasion and there need not be I think any case or situation require consideration or grant of any other benefit apart from the wage to such workman.

H 66. .I hope and expect that in the light of what has been

said and a past exercise of the corporation situation where a large number of such employees could be engaged without adherence to any formalities or procedures by the various local managements would be completely eliminated and done away with and this kind of employment in the corporation history would be the last occasion. Excepting the temporary employment the corporation will have no occasion or necessity to employ badly workmen it is hoped in future. Though part time employees will continue to be in existence for some more time as I have indicated, the corporation will also see its own way to absorb the part time employees in its regular employment as far as possible and reduce the number of part time employees to the minimum however, whenever, hereafter any occasion or vacancy arises of regular employment in part time categories and employment, then those who have worked part time in accordance with their seniority should be given preference for absorption in the regular cadre of the Corporation's employment. This should be irrespective of the qualifying age for the entry into corporation's service qualification but subject to his being found suitable."

23. Upon the reference under Section 36A of the Act being made by the Ministry of Labour to Justice S. M. Jamdar to clarify the Award of Justice R.D. Tulpule, it was held that the Award of Justice Tulpule was very clear as the same directs only for the absorption of the workmen concerned in the said dispute in the various offices, Divisions and Zones throughout the country. Therefore, it does not amount to recruitment.

24. Aggrieved by the said Award, the Corporation had filed SLP No. 14906 of 1988 before this Court urging various grounds. In the said SLP, this Court in its order dated 1.3.1989

A has observed that eight out of the nine workmen Unions said to be representing about 99% of the workers have entered into a compromise with the management of the Corporation. This Court further in the course of the order has observed and permitted the management of the Corporation and the said
B eight Unions to implement the said compromise by way of an interim measure without any prejudice to the rights and contentions of the members of the other Union, who have not entered into such compromise with the Corporation. The relevant terms and conditions of the compromise read thus :-
C

> "The Management agrees to consider the temporary/part-tim/badli workmen employed by the petitioner for 85 days in an 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
> D during the period 1.1.82 to 20.5.85, for regular employment on the basis and in the manner stated hereinbeloe. ... the selection of the candidate shall be made on the basis of the folloing qualifications, age, test, interview and also having regard to the number of days
> E worked by the candidates. A panel of selected candidates shall be made and the selected candidates shall be appointed in regular employment from the pane in the order of merit propectivity from the dates to be notifdies
> F and when vacancies in sanctioned posts for regular employment are filled from time to time"

Pursuant to the above compromise, this Court passed the following order in SLP No. 14906 of 1988 on 1.3.1989 :-

> G "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. <u>In the circumstances pending the final disposal of the appeal, we permit the Management and</u>
> H <u>the members of the said eight Unions to implement the</u>

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."

(emphasis laid by this Court)

25. From the perusal of the above order of this Court in SLP 14906 of 1988, nowhere it has been stated in the terms of the compromise between the parties that the Award of Justice R.D. Tulpule which was clarified upon reference made by the Central Government under Section 36A 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 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. The Award of Justice R.D. Tulpule reiterated by way of clarification in the Award passed by Justice Jamdar in the dispute subsequently has been operative even after the compromise arrived at between the parties to the compromise in the SLP No.14906 of 1988 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 concerned workmen in these appeals is not both factually and legally correct. This above said argument of the learned senior counsel on behalf of the Corporation is not tenable in view of

A 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
B 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 the CGIT or before the High Court or in these proceedings the concerned workmen have also accepted the said terms and
C conditions of the compromise arrived between the parties in the SLP No. 14906 of 1988. This Court in the order passed in the above said SLP which is extracted hereinabove has made it very clear that the said compromise entered into between
D unions therein, but it does not prejudice the rights and contentions of the concerned workmen whose disputes are in relation to their absorption in their respective posts who were appointed after 20.05.1985. Further, even if some of the workmen are bound under the said compromise that arose
E out of SLP No. 14906 of 1988, this in no way deters their right to raise the industrial dispute and get the same adjudicated vide order of reference by the appropriate Government to the CGIT. The Award of the CGIT was concluded after rightly examining the facts, circumstances of the case and the legal
F principles laid down in the Awards passed by Justice Tulpule and Justice Jamdar. More importantly the CGIT Award was passed after rightly appreciating the points of dispute referred to it and on the merits of the case. Furthermore, as per the legal principle laid down by this Court in the case of ***Bharat***
G ***Bank*** (supra), the Industrial Court while adjudicating an industrial dispute has the right to override contracts and create rights which are opposed to contractual rights. The CGIT has rightly adjudicated the industrial dispute referred to it by the Central Government at the instance of the concerned workmen
H on the points of dispute, on the basis of pleadings and evidence

on record and legal principles laid down in the Awards passed by the NIT. The relevant para from the above said case upon which the learned amicus curiae has rightly placed reliance reads thus:-

"**9.** The first contention is that the Industrial Tribunal cannot be said to perform a judicial or quasi-judicial function, since it is not required to be guided by any recognized substantive law in deciding disputes which come before it. On the other hand, in deciding industrial disputes, it has to override contracts and create rights which are opposed to contractual rights. In these circumstances, it is said that the very questions which arose before the Privy Council in *Moses* v. *Parker Ex-parte Moses*(1896(A.C. 245: (65 L.J.P.C. 19) arise in this case, these questions being:

(1) How can the propriety of the Tribunal's decision be tested on appeal, and

(2) What are the canons by which the appellate court is to be guided in deciding the appeal?

Their Lordships of the Privy Council undoubtedly felt that these were serious questions, but they had no hesitation in saying that "if it were clear that appeals ought to be allowed, such difficulties would doubtless be met somehow". This, in my opinion, is a sufficient answer to the difficulty raised. The Tribunal has to adjudicate in accordance with the provisions of the Industrial Disputes Act. It may sometimes override contracts, but so can a court which has to administer law according to the Bengal or Bihar Money-lenders Act, Encumbered Estates Act and other similar Acts. The Tribunal has to observe the provisions of the special law which it has to administer though that law may be different from the law which an

A ordinary court of justice administers. The appellate court, therefore, can at least see that the rules according to which it has to act and the provisions which are binding upon it are observed, and its powers are not exercised in an arbitrary or capricious manner.

B

.....

61. We would not examine the process by which an Industrial Tribunal comes to its decisions and I have no C hesitation in holding that the process employed is not judicial process at all. In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges D on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it E considers essential for keeping industrial peace..... The Tribunal is not bound by the rigid rules of law. The process it employees is rather an extended form of the process of collective bargaining and is more akin to administrative than to judicial function.

F

In describing the true position of an Industrial Tribunal in dealing with labour disputes, this Court in Western India Automobile Association v. Industrial Tribunal, Bombay, and others [1949] F.C.R. 321 quoted with approval a G passage from Ludwig Teller's well known work on the subject, where the learned author observes that

> "industrial arbitration may involve the extension of an existing agreement or the making of a new one H or in general the creation of new obligations or

> modification of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements."
>
> The views expressed in these observations were adopted in its entirety by this Court. Our conclusion, therefore, is that an Industrial Tribunal formed under the Industrial Disputes Act is not a judicial tribunal and its determination is not a judicial determination in the proper sense of these expressions."
>
> (emphasis laid by this Court)

Therefore, keeping in mind this principle laid down by this Court in the above referred case, we are of the view that the CGIT has rightly overridden the compromise arising out of SLP No. 14906 of 1988 and passed the Award in favour of the concerned workmen.

26. Further, with respect to the ***E. Prabhavathy*** case referred to supra, which was filed before this Court, on preliminary hearing of the said case, this Court directed the Corporation to frame a Scheme for regularisation of those employees who were granted ad hoc appointment for 85 days at intervals from time to time. In accordance with the same, a Scheme was framed as per the decision of this Court in the case of ***State of Haryana v. Piara Singh*** (supra). The relevant portion of the Scheme is extracted hereunder:

> "(a) All those temporary employees who have worked for 85 days in any two consecutive calendar years with the Life Insurance Corporation between 20.5.1985 uptill date and who confronted 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

A 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
B 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
C 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."

D Thereafter, this Court granted leave and disposed of the Civil Appeals incorporating the essential features of the Scheme as a part of its order. Further, this Court opined that the said Scheme was also applicable to the case of ***G. Sudhakar & Ors.*** (supra) and passed an order accordingly and disposed
E of that case also. The learned senior counsel for the respondents has made his endeavour by taking us through the said scheme which was framed on the basis of the decision of this Court in the case of ***Piara Singh's*** case (supra) and
F that the same was prevalent in 1992. It is pertinent to note that the said Scheme framed in the ***E. Prabhavathy*** case (supra) was the outcome of the order passed in Writ Petition filed by the concerned workmen in those cases and not the adjudication of the industrial dispute as per points of dispute referred to the
G CGIT/NIT by the Appropriate Government as per Section 10 of the Act. Therefore, placing reliance on the above Scheme by the learned senior counsel on behalf of the Corporation in justification of the impugned judgment and order of the High Court and the said Scheme formulated by the Corporation
H being accepted by the workmen in those proceedings does

not in any way take away the statutory and fundamental rights of the concerned workmen in these appeals, who have raised the industrial dispute for their absorption into regular permanent posts of Class III and Class IV of the Corporation. Further, by a careful reading of the said order in the SLP No. 14906 of 1988, it has been made clear that the Awards passed by the NIT (by Justice Jamdar and Justice Tulpule) after adjudicating the points of dispute in the industrail 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 the CGIT in its Award 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 Scheme framed in ***E. Prabhavathy & Ors.*** and ***G. Sudhakar & Ors.*** cases which scheme has no application to the case of the concerned workmen involved in these appeals referred to supra. Therefore, the learned amicus curiae Mr. Naphade has rightly placed reliance upon the decision of this Court in the case of ***D. J. Bahadur*** (supra) to substantiate his legal contention that the Awards passed by Justice R.D. Tulpule and reiterated by Justice Jamdar by clarifying the same in the reference under Section 36A of the Act are still binding upon the parties as the same have neither been set aside nor terminated by either of the parties or orders of this Court or Scheme framed by the Corporation. The relevant paragraphs of the above said case are extracted hereunder:

> **"138.** The court then proceeded to consider specifically the situation that would obtain in the 3rd period in relation to an award and held:

A "Quite apart from this, however, it appears to us that even if an award has ceased to be in operation or in force and has ceased to be binding on the parties under the provisions of Section 19(6) it will continue to have its effect as a contract between the parties
B that has been made by industrial adjudication in place of the old contract. So long as the award remains in operation under Section 19(3), Section 23(*c*) stands in the way of any strike by the workmen and lock-out by the employer in respect of any matter covered by
C the award. Again, so long as the award is binding on a party, breach of any of its terms will make the party liable to penalty under Section 29 of the Act, to imprisonment which may extend to six months or with fine or with both. After the period of its operation and
D also the period for which the award is binding have elapsed Section 23 and Section 29 can have no operation. We can however see nothing in the scheme of the Industrial Disputes Act to justify a conclusion
E that merely because these special provisions as regards prohibition of strikes and lock-outs and of penalties for breach of award cease to be effective the new contract as embodied in the award should also cease to be effective. On the contrary, the very
F purpose for which industrial adjudication has been given the peculiar authority and right of making new contracts between employers and workmen makes it reasonable to think that even though the period of operation of the award and the period for which it
G remains binding on the parties — in respect of both of which special provisions have been made under Sections 23 and 29 respectively — may expire, the new contract would continue to govern the relations between the parties *till it is displaced by another*
H *contract*. The objection that no such benefit as claimed

could accrue to the respondent after March 31, 1959 must therefore be rejected." A

139. It is the underlined portion of this paragraph which impelled the High Court to come to the conclusion that even a notice under Section 19(6) of the ID Act would not terminate a settlement (which, according to the High Court, stands on the same footing as an award and, in fact is indistinguishable there from for the purpose of Section 19) but would have the effect of merely paving the way for fresh negotiations resulting ultimately in a new settlement — a conclusion which has been seriously challenged on behalf of the Corporation with the submission that *Chacko case* has no application whatsoever to the present controversy inasmuch as the special law comprised of Sections 11 and 49 of the LIC Act fully covers the situation in the 3rd period following the expiry of the 1974 settlements. The submission is well based. In *Chacko case* this Court was dealing with the provisions of the ID Act alone when it made the observations last extracted and was not concerned with a situation which would cover the 3rd period in relation to an award (or for that matter a settlement) in accordance with a specific mandate from Parliament. The only available course for filling the void created by the Sastry Award was a continuation of its terms till they were replaced by something else legally enforceable which, in the circumstances before the court, could only be another contract (in the shape of an award or a settlement), there being no legal provision requiring the void to be filled otherwise. In the present case the law intervenes to indicate how the void which obtains in the 3rd period shall be filled and, if it has been so filled, there is no question of its being filled in the manner indicated in *Chacko case* wherein, as already pointed out, no such B C D E F G H

A law was available. The observations in that case must thus be taken to mean that the expired award would continue to govern the parties till it is displaced by another contract *or by a relationship otherwise substituted for it in accordance with law."*

B

In view of the statement of law laid down by this Court in the above referred case, the reliance placed upon para 43 and 47 of **D. J. Bahadur** case and other cases relied upon by the learned senior counsel for the Corporation are misplaced and

C the same do not support the case of the Corporation.

27. In view of the law laid by this Court in the case referred to supra, both the Award of Justice Tulpule reiterated by way of clarification Award by Justice Jamdar are still

D operative as the same are not terminated by either of the parties as provided under Section 19(6) of the Act. The compromise between the parties in SLP No. 14906 of 1988 and the Scheme formed in ***E. Prabhavathy & Ors.*** and ***G. Sudhakar & Ors.*** (supra) do not amount to substitution of the

E Awards passed by Justice R. D. Tulpule and by Justice S. M. Jamdar. Hence, in view of the aforesaid reasons, the submissions made by Mr. Naphade, learned amicus curiae, in justification of the Award passed by the CGIT is based on the terms and conditions laid down in the Awards passed by

F the NIT (by Justice Tulpule and Justice Jamdar) in favour of the workmen for absorption as they have been rendering their service to the Corporation in the perennial nature of work for a number of years and hence, the High Court was not justified in interfering with the said Award passed by the CGIT. The said

G contention urged by the learned amicus curiae is accepted by us, as the impugned judgment and order of the High Court is contrary to the Awards referred to supra, the provisions of the Industrial Disputes Act and the law laid down by this Court in the aforesaid cases. The Awards passed by the NIT is binding

H

upon the Corporation till it is substituted by another Award or replaced by another settlement in relation to the service conditions of the workmen of the Corporation in accordance with law as provided under Section 12 read with Section 18(3) of the Act or another Award that is required to be passed by the Jurisdictional CGIT in relation to the above subject matter after the Awards which are in operation are terminated by either of the parties as provided under Section 19(6) of the Act. Until then, the said Award passed by the NIT will still be operative in law. Therefore, the same has been rightly applied to the fact situation on hand in the Award passed by the CGIT and it could not have been set aside by the High Court. Thus, we are of the opinion that the learned single Judge erroneously set aside the Award passed by the CGIT and the said judgment of the learned single judge has been further erroneously affirmed by the Division Bench of the High Court. The said judgments of the High Court are clearly contrary to law and legal principles laid down by this Court in cases referred to supra. Hence, the same are liable to be set aside by allowing these appeals and restoring the Award of the CGIT.

28. The learned amicus curiae rightly placed reliance upon entry Item No.10 of Schedule V of the Act in employing the concerned workmen as temporary, badli and part-time employees against permanent posts doing perennial nature of work and continuing them as such for number of years. This is a clear case of unfair labour practice as defined under Section 2(ra) of the Act which is statutorily prohibited under Section 25T of the Act and the said action of the Corporation amounts to penalty under Section 25U of the Act. For this reason also, the findings and reasons recorded in the Award of the CGIT in answering the points of dispute referred to it by Central Government in favour of the concerned workmen is legal and valid. The High Court has erred in not noticing the aforesaid important, relevant, factual and legal aspect of the

A case of the concerned workmen and has erroneously set aside the Award of the CGIT passed in favour of the concerned workmen in exercise of its judicial power. The High Court has erred in not following the legal principles laid down by this Court in the case of ***Harjinder Singh v. Punjab State***
B ***Warehousing Corporation***[9], wherein it is held thus:-

> "17. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the
> C present one, the High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the preamble of the Constitution and
> D the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of
> E material resources of the community to sub-serve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J, opined that "the concept of social and economic justice is a living
> F concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State" - *State of Mysore v. Workers of Gold Mines AIR* 1958 SC 923."

G The said principle has been reiterated by this Court recently in the case of ***Jasmer Singh v. State Of Haryana & Anr.*** (C.A. No. 346 OF 2015).

For the aforesaid reasons also, the case of the concerned workmen/appellants must succeed and the
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[9] (2010) 3 SCC 192

impugned judgment and order must be set aside. Accordingly, it is set aside.

Answer to point (iii)

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

Mr. Shekar Naphade, learned amicus curiae has rendered excellent assistance to this Court at our request to arrive at just conclusions in these cases. The same is appreciated and placed on record.

This Judgment and order shall be implemented within eight weeks from the date of receipt of the copy of this Judgment and the compliance report of the same shall be submitted for perusal of this Court.

Accordingly, the appeals are allowed in the above said terms. All the applications are disposed of. No costs.

Nidhi Jain

Appeals allowed.