

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WA.No. 1707 of 2014 () IN WP(C).9608/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 9608/2014 of HIGH COURT OF KERALA
DATED 17-11-2014

APPELLANT(S)/PETITIONER:

1. FINANCIAL SERVICE EXECUTIVES WELFARE ASSOCIATION
REG NO. EKM/TC/145/2014
REPRESENTED BY THE SECRETARY, SAJITH T., SREELAKSHMI
NEAR OLD M.C ROAD, KODIMATHA, KOTTAYAM.

2. MURALEEDHARAN C.V
FINANCIAL SERVICE EXECUTIVE, LIC OF INDIA
ALUVA BRANCH, ERNAKULAM, RESIDING AT CHAMPARAYIL
AROOR P.O., ALAPPUZHA.

BY ADVS.SRI.N.DHARMADAN (SR.)
SRI.M.R.VENUGOPAL

RESPONDENT(S)/RESPONDENTS:

1. LIFE INSURANCE CORPORATION OF INDIA
REP. BY THE CHAIRMAN, YOGAKSHEMA, P.B NO. 19953
JEEVAN BHIMA MARG, NAIRMAN POINT, MUMBAI - 400 021.

2. ZONAL MANAGER
LIC OF INDIA, ZONAL OFFICE, LIC BUILDING
153, ANNA SALAI, P.B.NO. 2540
CHENNAI - 600 002.

3. SENIOR DIVISIONAL MANAGER
LIC OF INDIA, DIVISIONAL OFFICE, JEEVAN PRAKASH
P.B.NO. 177, KOZHIKODE - 683 001.

4. SENIOR DIVISIONAL MANAGER
LIC OF INDIA, JEEVAN PRAKASH, P.B NO. 1133
M.G.ROAD, KOCHI - 682 011.

5. SENIOR DIVISIONAL MANAGER
LIC OF INDIA, LEEVAN PRAKASH, P.B NO. 1001
PATTOM, THIRUVANANTHAPURAM - 695 004.

6. SENIOR DIVISIONAL MANAGER
LIC OF INDIA, DIVISIONAL OFFICE, 19/114
MYTHREE ARCADE, POOTHOLE, THRISSUR - 680 001.

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7. SENIOR DIVISIONAL MANAGER
LIC OF INDIA, JEEVAN PRAKASH, KURIEN UTHUP ROAD
P.B NO. 609, NAGAMPADOM, KOTTOAYAM - 686 001.

8. ADDITIONAL CENTRAL PROVIDENT FUND COMMISSIONER
DK BLOCK, SECTION - II, SALT LAKE CITY
KOLKATA - 700 091.

9. THE CHAIRMAN
INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA
3RD FLOOR PARISRAMA BHAVAN
BASHEER BAGH, HYDERABAD - 500 004.

R1 -R 7 BY ADV. SRI.S.EASWARAN
BY SMT.T.N.GIRIJA, SC,EPF ORGANISATION

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 09-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“C.R.”

ASHOK BHUSHAN, Ag.CJ & A.M.SHAFFIQUE, J

W.A.No.1707 of 2014

Dated this the 9th March, 2015

JUDGMENT

Ashok Bhushan, Ag.CJ.

This Writ Appeal has been filed against the judgment dated 17.11.2014 in W.P(C).No.9608 of 2014 by which judgment the Writ Petition filed by the appellants has been dismissed. The parties shall be referred to as in the Writ Petition.

2. The brief facts leading to filing of the Writ Petition are:

The Writ Petition was filed by two petitioners. The first petitioner being Financial Services Executives Welfare Association through its Secretary and the second petitioner being a Financial Services Executive working at Ernakulam. The Life Insurance Corporation framed a Scheme, namely, Life Insurance Corporation (Financial Services Executives) Scheme, 2007 (hereinafter referred to as 'the Scheme, 2007'). The Chairman, in exercise of

power under clause 28 of the Scheme, 2007, issued administrative instructions, which have been brought on record as Exhibit P1. The Scheme, 2007 authorises the Zonal Managers to decide the actual number of Financial Services Executives required to be engaged, the conditions of eligibility, notification for engagement, procedure for engagement, training and allocation. The members of the first petitioner, after undergoing through the process of selection were engaged as Financial Services Executives (hereinafter referred to as 'the FSEs') in different Zones of the State of Kerala. The engagement was for a fixed period as notified in the Scheme, 2007 and various FSEs were allocated to different Zones. The FSEs were to be paid a lump sum payment of ₹10,000/- in the first year subject to increase to ₹20,000/- in the seventh year. The appointment order mentioned it to be contractual appointment only for a period of three years extendable to further two years. The petitioners' case was that majority of FSEs were continuing for a period of seven

years and they submitted representations to the Life Insurance Corporation of India (hereinafter referred to as 'the Corporation') for being absorbed in regular service of the Corporation and the benefits like provident fund, gratuity, maternity leave etc. be extended to the FSEs. Exhibit P11 dated 18.01.2014 and Exhibit P15 dated 15.05.2014 are some of the representations submitted by the first petitioners to the Chairman of the Corporation and the Chairman, Insurance Regulatory and Development Authority of India respectively. The Additional Central Provident Fund Commissioner on 06.08.2012 wrote to the Executive Director (Personnel), Life Insurance Corporation of India, Central Office noticing the decision of the Corporation to extend the benefit of Provident Fund to the contractual employees, i.e., FSEs. The letter further directed that the Provident Fund benefits are extended to the FSEs from the date of joining service. The Corporation for implementing the decision wrote letter dated 23.2.2013 to the Regional Managers

for sending the relevant datas of FSEs. The Writ Petition was filed by the petitioners in June, 2014 praying for the following reliefs:

- “(a) Issue a writ of mandamus or other writ or order or direction directing respondents 1 to 7 to regularize FSE now working in LIC Kerala Branches taking into account their long service in the vacant posts of FSE created as per Exhibit P1 scheme in terms of the statements of the Chairman in Exhibit P9.*
- (b) Issue a writ of mandamus or other writ or direction directing the respondents 1 to 7 not to make any further contractual appointment of FSE till regularization of all FSE working in Kerala in the existing posts of FSE in Kerala.*
- (c) Issue a writ of certiorari or other writ or direction to quash the terms contractual appointments in Exhibit P1 scheme since the same is illegal, arbitrary and violation of provisions Contract Labour Abolition Act 1970 and of the LIC Act, which do not provide for such appointment on contractual basis in the LIC particularly when the appointment of FSE is made after following a regular statutory selection process;*
- (d) Declare that the petitioners are working as regular employees as FSE in LIC after having undergone regular selection process and therefore they are entitled to get all service benefits due to regular employees of LIC such as Development Officers and office staff;*

- (e) *Issue a writ of mandamus or other writ or order or direction directing the Chairman to consider and dispose of the memorandum Exhibit P11 and other representations favourably to the petitioners granting them regularization in service as claimed by them w.e.f date of service;*
- (f) *Issue a writ of mandamus or other writ or order or direction directing the LIC and Additional Central Provident Fund Commissioner to proceed with the order Exhibits P6 and P7 further and grant the benefit of Provident Fund, Gratuity etc. with all other eligible benefits to FSE working in LIC forthwith;*
- (g) *Issue such other order as this Hon'ble Court may deem fit and necessary in the facts and circumstances of the case;*
- (h) *Issue writ of mandamus or other writ or direction directing the respondent to implement the provisions in accordance with the terms published in Exhibits P14, P15 and P16 had been filed for the same as per the instruction of the additional 9th respondent."*

3. A counter affidavit was filed by the Corporation in the Writ Petition stating that the engagement of FSEs is not under any statutory scheme and being under administrative instruction, the Writ Petition is not maintainable. It is stated that the appointment being contractual in nature as per the Scheme, 2007 itself, no

claim can be raised by the petitioners for absorption in regular service of the Corporation. It is stated that the FSEs, having accepted the terms and conditions of the employment, i.e., contractual employment, cannot now turn round and claim that their services are to be absorbed. It is stated that the mere fact that before engaging the FSEs the selection process was undertaken does not make the selection on the regular establishment of the Corporation. The FSEs are agents of the Corporation and therefore their services are liable to be terminated on terms and conditions of the contract. The engagement of FSEs is not an engagement within any of the categories of staff as mentioned in the Life Insurance Corporation of India (Staff) Regulations, 1960 (hereinafter referred to as 'Regulations, 1960') and there are no post of FSEs born in the regular cadre. There is no occasion to treat them as regular employees or accept their claim of absorption.

4. A reply was filed by the petitioner refuting the pleadings in the counter affidavit. It was reiterated that

the Scheme, 2007 is a statutory scheme, which fact was admitted in the counter affidavit filed in W.P(C).No.4211 of 2013, a writ filed by the FSEs in the Allahabad High Court. The FSEs are not agents as defined in the Life Insurance Corporation of India (Agents) Rules, 1972. The nature and duties of FSEs are development of insurance business. The learned Single Judge, after hearing the parties, dismissed the Writ Petition, against which judgment, this Writ Appeal has been filed.

5. We have heard Sri.N.Dharmadan, learned Senior Counsel appearing for the appellants and Sri.S.Easwaran, learned Standing Counsel for the Life Insurance Corporation of India.

6. Learned counsel for the appellants submitted that the members of FSEs are engaged as per a statutory scheme, namely, Life Insurance Corporation (Financial Service Executive) Scheme, 2007. The nature of appointment is a statutory appointment which entitles them to continue in regular establishment of the

Corporation and it is the obligation of the Corporation to absorb the members of the FSEs in the regular establishment. It is submitted that the Corporation is fully empowered under Section 23 of the Life Insurance Corporation of India Act, 1956 and it, in exercise of a statutory power, has engaged the members of FSEs. Annexure-1 is a statutory scheme which provides detailed procedure for regular selection, which is akin to regular selection in the establishment of Corporation. The duties and functions, which are performed by the members of FSEs cannot be treated differently and permitting the members of FSEs to continue as the contractual employees and refusal by the Corporation in absorbing them is arbitrary and discriminatory. The mere fact that the order mentions the nature of engagement as contractual cannot be held to be prejudicial to the rights of the members of FSEs, since the Corporation, i.e., the employer is in a dominating position on which members of FSEs can have no say. The members of FSEs were

entitled to other benefits like provident fund, gratuity, maternity leave etc. which have been denied to them. It is submitted that the Additional Provident Fund Commissioner having already written to the Corporation to extend the benefit of Provident Fund, the Corporation ought to have given the benefit of provident fund to all the FSEs from the date of their engagement.

7. Sri.S.Easwaran, learned counsel appearing for the Corporation, refuting the submissions of learned counsel for the appellants, contended that the Scheme, 2007 under which the members of FSEs are engaged is only an administrative instruction issued by the Corporation, which in no manner gives any statutory right to the members of FSEs to continue in the service. It is submitted that the engagement of FSEs is a contractual engagement, which condition is specifically mentioned in the letter of appointment itself. The members of FSEs have accepted the contractual engagement with their eyes open, cannot now deny the nature of their

engagement and claim continuance in service. It is submitted that the FSEs are not included in the regular cadres of the Corporation, nor it is governed by the Regulations, 1960. There being no regular post on which members were appointed, there is no occasion to permit them to continue in the establishment of the Corporation. It is submitted that the contractual employees have no right to claim absorption in regular service. He has referred to Regulation 8 of the 1960 Regulations, which clearly provides that no person appointed on temporary basis is entitled to absorption in the service of the Corporation. It is submitted that the benefits to which the members of the FSEs are entitled were already laid down in the Scheme, 2007 and the members of the FSEs are not entitled for any other benefits.

8. Learned counsel for the parties have placed reliance on various judgments of this Court and the Apex Court, which shall be referred to while considering the submissions in detail.

9. From the submissions made by learned counsel for the parties and the pleadings on record, the following are the issues which arise for consideration in the appeal:

I. Whether the Life Insurance Corporation (Financial Service Executive) Scheme, 2007 is a statutory scheme?

II. Whether the FSEs engaged by the Corporation after selection under contract of service are entitled to be regularised in the service of the Corporation?

III. Whether Exhibit P1 Scheme, which mentions the engagement of contractual appointment, is illegal, arbitrary and violative of the Contract Labour Abolition Act, 1970?

IV. Whether the FSEs are entitled to be granted the benefit of provident fund, maternity leave, gratuity etc.?

10. Before we consider the respective submissions of learned counsel for the appellants, it is necessary to look into the statutory provisions pertaining to the Corporation.

11. The Corporation was established and incorporated under Section 3 of the Life Insurance Corporation of India Act, 1956. Section 6 of the Act enumerates the functions of the Corporation. Section 23 empowers the Corporation to employ such members of persons as it may think fit to discharge its functions under the Act. Under Section 48 the Central Government is empowered to make Rules. Under Section 49 the Corporation, with previous approval of the Central Government, is empowered to make regulations. In exercise of power under Section 49, the Life Insurance Corporation of India (Staff) Regulations, 1960 has been framed by the Corporation with previous approval of the Central Government. Regulation 2 of the Regulations, 1960 is regarding applicability of the regulations to every whole-time (salaried) employee, which is to the following effect:

“2. They shall apply to every whole-time (salaried) employee of the Corporation (in India)

unless otherwise provided by the terms of any contract, agreement or letter of appointment."

Regulation 5 deals with classification of staff and Regulation 6 deals with Appointing Authority. Regulations 5 and 6 are as follows:

"5. The staff of the Corporation shall be classified as follows: Class I-Officers Class II-(Development) Officers Class III-Suipervisory and Clerical Staff Class IV - Subordinate staff.

6. Appointments including promotions shall be made by the authorities specified in this behalf in scheduled I."

Regulation 8 deals with Temporary Staff, which is to the following effect:

"8. (1) Notwithstanding anything contained in these Regulations, a Managing Director, 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 service of the Corporation or claim preference for recruitment to any post."

12. In the present case the FSEs have been engaged under the Scheme, 2007. A copy of the modified Scheme

has been brought on record as Annexure-I to the Writ Appeal. Instruction for implementation of the Scheme has been brought on record as Exhibit P1. Paragraph 3 of the Scheme deals with nature of the engagement, which is to the following effect:

"3. Nature of Engagement:

The engagement shall be purely on Contractual Basis initially for a period of three years. The terms and conditions of engagement will be governed by LIC of India (Financial Services Executives) Scheme, 2007."

13. Paragraph 5 deals with the conditions of eligibility. Clause 6 deals with the mode of selection. Paragraphs 9 and 11 deal with training and practical training. Minimum business parameters have been laid down in paragraph 15. Remuneration has been detailed in paragraph 17. Paragraph 19 deals with leave and paragraph 20 deals with traveling expenses. Paragraph 23 deals with termination of contract. Paragraph 24 deals with continuity as direct agent. Paragraph 26 deals with renewal of contract. Along with Exhibit P1 Annexure-6 has

been annexed, which is a format of a letter of contract to be issued for engagement of FSEs. The term of selection is mentioned in paragraph 1, which is to the following effect:

"1. Terms of Selection: Contractual appointment for a period of 3 years as a Financial Services Executive - Renewable at the sole discretion of the Corporation subject to certain terms and conditions for another 2 years only."

14. Paragraph 8 of the letter is about termination of contract. In the said paragraph it is clarified that the provisions of the Regulation, 1960 will not be applicable and the selection will be on a contractual basis for a period of three years and they shall not be entitled to any other benefits such as gratuity, bonus, medical benefits, pension etc. It is useful to quote the relevant portion of paragraph 8, which is to the following effect:

"8. Termination of Contract: *The provisions of LIC of India (Staff) Regulations, 1960 will not be applicable to you. In respect of all matter not set forth herein, your selection will be governed by such rules as may be framed from time to time. You shall, conform with and obey all orders and directions which may be given to you in*

the course of your duties by any person or persons under whose jurisdiction, superintendence or control you may, from the time being, be placed.

Your selection being on contractual basis for a period of three years, you will not be entitled to any other benefits such as Gratuity, Bonus, Medical Benefits, Pension etc. as provided by the Corporation of its employees in the regular cadre.”

15. The principal claim, which has been laid by the petitioners in the Writ Petition is regarding their claim to be absorbed/regularised in the regular service of the Corporation despite they having accepted contractual engagement for limited period.

ISSUE-I:

16. The first issue relates to the nature of the Scheme, 2007. The submission of learned counsel for the petitioners is that the Scheme, 2007 is a statutory scheme. As noted above, under Section 23 of the Life Insurance Corporation Act, 1956, the Corporation is entitled to employ such number of persons as it thinks fit. The Corporation is, thus, a statutory body, which is

empowered to employ such number of persons as it thinks fit. As noted above, regulations are framed, i.e., Regulations, 1960 in exercise of power vested in the Corporation under clauses (b) and (bb) of sub-section (2) of Section 49. Section 49(2)(b) and (bb) as it existed at the time of the Scheme, 2007 was to the following effect:

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

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

Section 49(2)(b) has been substituted in the Life Insurance Corporation Act, 1956 by Act 8 of 2012 in the following manner:

"49. Power to make regulations.-

(1) ...

(2) ...

(b) the method of recruitment of employees and agents of the Corporation and the terms and conditions of the agents."

17. The Regulations, 1960 contemplate employment of staff as classified in the Regulations, 1960 and

recruitment is contemplated against the vacancies in sanctioned post as per Regulation 7. Schedule-I of the Regulations, 1960 enumerates different categories of staff, i.e., Class-I officers, Class-II Development Officers, Class-III Supervisors and clerical staff and Class-IV subordinate staff. The engagement of the members of FSEs is in accordance with the Scheme, 2007 and has not been made in accordance with Regulations, 1960. FSEs are not included in the category of staff as contemplated in Regulations, 1960. Thus, the engagement of members of FSEs is not in accordance with Regulations, 1960. Whether the Scheme, 2007 is statutory in nature is the question to be answered. Although the engagement of FSEs is not covered by the Regulations, 1960, but the jurisdiction and power of the Corporation to engage any other category of staff apart from regular staff cannot be denied, which flows from power under Section 23 as noted above. Every employer is entitled to engage the staff including daily wage employees/contractual employees in

exigency of service. That situation has been very well accepted by the the Constitution Bench of the Supreme Court in **Secretary, State of Karnataka and others v. Umadevi and others** [(2006)4 SCC 1]. In paragraph 12 of the judgment it was held as follows:

"12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting under Article 226 of the

Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.”

18. The Scheme, 2007 has been framed by the Corporation, which is a statutory authority. The Corporation is a State within the meaning of Article 12 of the Constitution of India and the Corporation has to conform to the provisions of Articles 14 and 16 of the Constitution of India in discharge of its function. Learned counsel for the petitioners has placed reliance on ***Life Insurance Corporation of India v. D.J. Bahadur and others*** (AIR 1980 SC 2181). The Apex Court had laid down the following in paragraph 88 of the judgment:

"88. Section 23 of the L. I. C. Act gave to the Corporation the power to employ such number of persons as it thought fit for the purpose of enabling it to discharge its functions under the Act and declared that every person so employed or whose services stood transferred to the Corporation under Section 11 would be liable to serve anywhere in India. Section 49 conferred on the Corporation the power to make regulations for the purpose of giving effect to the provisions of the Act with the previous approval of the Central Government. Sub-section (2) of that section

enumerated various matters in relation to which such power was particular conferred. Clauses (b) and (bb) of sub-section (2) read thus :-

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

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

Another judgment relied on by learned counsel for the petitioners is an Apex Court judgment in ***Jayantilal Amratlal v. F.N.Bana and others*** (AIR 1964 SC 648). The Apex Court in the said case had occasion to consider the definition of 'law' as given in Section 2(d) of the Bombay Reorganisation Act, 1960. The question was as to whether the notification by President issued under Article 258(1) of the Constitution of India has force of law. In the above context the Apex Court had considered various expressions including Subordinate Legislation, Regulation, Scheme etc. Paragraph 40 of the judgment is as follows:

"40. Let us now look to the definition in S. 2(d) in the light of this basic concept of law and see how the various terms included within "law" as having the force of law satisfy this

basic concept. The first term included in S. 2(d) is enactment. An enactment has necessarily the force of law because it is an expression of the legislative will and is expressly enacted as law by the legislature and would necessarily contain a body of rules which have to be obeyed by persons living in the particular community. The second term used in S. 2(d) is ordinance having the force of law. If an ordinance is passed, say under Art. 123 or Art. 213 of the Constitution, it stands exactly on the same footing as an enactment and would necessarily have the force of law. If it is another kind of ordinance, it can have the force of law if it lays down a binding rule of conduct and the body passing it has the authority of law to lay down such a binding rule of conduct. Such an ordinance would usually be subordinate legislation. The third term is regulation. A regulation may be a direct command of the legislature in which case it will stand on the same footing as an enactment. Examples of this kind of regulations are to be found in the old regulations passed by the Governor-General before 1857 under his law-making power, some of which are still in force in this country. Secondly, regulations may be a kind of subordinate legislation and in such a case they are bound to consist of a body of rules which regulate the conduct of persons living in the community and are enforceable by courts or other authorities provided the body passing the regulations has the authority to do so. The fourth term is order. Orders may be two kinds; they may be merely executive orders laying down no course of conduct for anybody, though they may have the authority of law or may not be opposed to any law and courts or other authorities may recognise them. Another kind of orders will be in the form of subordinate legislation laying

down rules of conduct which can be enforced by courts or other authorities. An example of such orders may be found in various orders passed under the Defence of Indian Act, 1939 or the Essential Commodities Act, 1955. These orders lay down a body of rules which regulate the conduct of person or person living in the community and are enforceable by courts or other authorities. The next term is bye-law. Bye-laws are a well-known species of subordinate legislation. They lay down general rules of conduct governing persons and are enforceable by courts or other authorities if passed by a body having the authority of law to do so. The next term is rule. Rules are again a well-known species of subordinate legislation laying down general rules of conduct and if they are passed by a body having the authority to do so they are enforceable by courts or other authorities. The next term is scheme. Schemes may be of two kinds. They may embody subordinate legislation containing a body of rules binding of persons with whom they are concerned and in such a case if passed by a body having the necessary authority they will be enforceable by courts or other authorities and would have the force of law. But there may be another kind of schemes which are merely executive in nature and they do not contain any rules of conduct for anybody to follow. This will not have the force of law and will not be enforceable by courts or other authorities, as they lay down no rule of conduct which courts or other authorities may enforce. The next term is notification. Notifications again may be of two kinds. Most government orders are notified so that the public may know them. All of them have not the force of law. Only such notifications have the force of law which are a species of subordinate legislation passed by a body having the

authority to promulgate them and which lay down rules of conduct for persons in the community to obey. But there may be notifications which lay down no rule of conduct. For example, all appointments, and transfers of officers are notified through notifications and these are merely executive orders for the purpose of the information of public and do not lay down any rule of conduct to be followed by persons in the community. The last term is "other instruments" and these again may be of two kinds, like schemes. If they have the characteristic of subordinate legislation and contain a rule or body of rules to be followed by persons living in the community they will have the force of law and will be enforced by courts or other authorities. But they can also be merely executive in nature; for example, sale-deeds, mortgage deeds etc. are all instruments but have not the force of law. Similarly treaties between sovereign powers are also instruments but they have by themselves no force of law. That is why we find specific provision in Art. 253 for legislation to give effect to international agreements."

From the above paragraph it is clear that while considering the expression 'scheme' the Apex Court referred to two kinds of scheme. Firstly, they may embody subordinate legislation containing a body of rules binding on persons with whom they are concerned and in such a case if passed by a body having the necessary authority they will be enforceable by Courts or other authorities and

would have the force of law. But there may be another kind of scheme which is merely executive in nature and they do not contain any rules of conduct for anybody to follow. This will not have the force of law and will not be enforceable by Courts or other authorities as they lay down no rule of conduct which Courts or other authorities may enforce. The power under Section 23 given to the Corporation to employ staff is not a power of subordinate legislation, rather it is a statutory power to employ staff to carry out the purpose of the Act. The said power is a statutory/administrative power given to the Corporation. The Corporation is empowered to make regulations under Section 49 of the Life Insurance Corporation Act, 1956, which is in the nature of subordinate legislation. From the above judgment of the Supreme Court it is clear that the scheme 2007 cannot be held to be subordinate legislation. But, as observed above, the Corporation being a State within the meaning of Article 12 of the Constitution, it has to conform with the provisions of the Constitution of India.

Even in its administrative action the Corporation is bound to act in a fair and reasonable manner and any scheme framed by it for engagement of staff has to be tested on the touchstone of Articles 14 and 16 of the Constitution of India. Thus, the fact that the Scheme, 2007 whether a statutory scheme or non statutory scheme does not make much difference. When the Corporation has floated a scheme exercising statutory power, the scheme has to be reasonable, fair and conforming to mandate of Article 14 and 16 of the Constitution of India.

19. We, thus, are of the view that the Scheme, 2007 framed by the Corporation has to conform to various constitutional obligations on the Corporation. The first issue is answered accordingly.

ISSUES II & III

20. Issues II and III being inter connected are being taken together. The Corporation issued a Scheme for engagement of Financial Services Executives on contractual basis. Various salient features of the Scheme

have already been noticed above. The Scheme provided for a mode of selection, training, allocation, minimum business parameters, remuneration, leave, travelling expenses, termination of contract etc. As noted above, Annexure-6, which is part of Exhibit P1 is on the subject engagement as Financial Services Executives. Paragraph 1 of Annexure-6 terms of selection mentions “contractual appointment for a period of 3 years as a Financial services Executive - renewable at the sole discretion of the Corporation subject to certain terms and conditions for another 2 years only”.

21. The Scheme, thus, clearly and expressly stated that the appointment is a contractual appointment for three years with renewal of two years further. One of the submissions is that even the Scheme itself contemplated continuance for seven years, since details of remuneration to be paid in 7th year have been mentioned in the Scheme itself. It is further submitted that most of the FSEs are continuing even in the 7th year. Be that as it may, the FSEs

having been appointed on contractual basis and the services have been extended upto 6th or 7th year does not change the nature and character of the Scheme. As noted above, the engagement of FSEs is not an engagement under Regulations, 1960, which Regulations contemplate appointment in regular services in different categories of staff as enumerated therein. We have already noted above that Regulation 8, which deals with appointment of staff on temporary basis subject to general or special directions issued by the Chairman, shall not give any right for absorption in the services of the Corporation or claim preference for recruitment for any post. This has been clearly stated in Regulation 8 as noted above. The statutory provision thus, indicate that persons engaged on temporary basis cannot claim any absorption in the regular service.

22. Learned counsel for the appellants attacked the provisions in the Scheme, 2007, wherein the engagement of FSEs has been treated to be engagement on

contractual basis. The submission is that the clause defining the engagement on contractual basis is arbitrary and violative of Articles 14 and 16 of the Constitution of India. He submitted that all members of FSEs have gone through regular selection process, they should be treated to be appointed on regular basis. Mere undergoing through a process for selection for a particular job whether contractual or temporary does not change the nature and character of the engagement. Learned counsel for the appellants has relied on the judgment of the Apex Court in ***Central Inland Water Transport Corporation Ltd. v. Brojo Nath*** (AIR 1986 SC 1571). The appellants have submitted that in the changing scenario and the changing method of engagement, the Court should take a progressive view and should protect the party, who is not in a position to obtain any better conditions of service. The Apex Court in the said case was considering Rule 9(i) of the Central Inland Water Transport Corporation Ltd. Service Discipline and Appeal Rules (1979) which

provided for termination of services of permanent employees without giving any reason and without giving a notice. The Apex Court in the said case has laid down that such clause is opposed to public policy and void in view of Section 23 of the Indian Contract Act. The Apex Court held that Rule 9(i) was violative of Articles 14 and 16 of the Constitution of India and it confers an absolute, arbitrary and unguided power upon the Corporation. The following was laid down in paragraphs 90, 100 and 101 of the judgment:

"90. Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of nineteenth-century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample under foot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before

the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Art. 14. This principle is that, the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast

infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its, own facts and circumstances.

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100. The power conferred by Rule 9(i) is not only arbitrary but is also discriminatory for it enables the Corporation to discriminate between employee and employee. It can pick up one employee and apply to him clause (i) of Rule 9. It can pick up another employed and apply to him clause (ii) of Rule 9. It can pick up yet another employee and apply to him sub-clause (iv) of clause (b) of Rule 36 read with Rule 38 and to yet another employee it can apply Rule 37. All this the Corporation can do when the same circumstances exist as would justify the Corporation in holding under Rule 38 a regular disciplinary inquiry into the alleged misconduct of the employee. Both the contesting Respondents had, in fact, been asked to submit their explanation to the charges made against them. Sengupta had been informed that a disciplinary inquiry was proposed to be held in his case. The charges made against both the Respondents were such that a disciplinary inquiry could easily have been held. It was, however, not held but instead resort was had to Rule 9(i).

101. The Corporation is a large organization. It has offices in various parts of West Bengal, Bihar and Assam as shown by the said Rules, and possibly in other States also. The

said Rules form part of the contract of employment between the Corporation and its employees who are not workmen. These employees had no powerful workmen's Union to support them. They had no voice in the framing of the said Rules. They had no choice but to accept the said Rules as part of their contract of employment. There is gross disparity between the Corporation and its employees, whether they be workmen or officers. The Corporation can afford to dispense with the services of an officer. It will find hundreds of others to take his place but an officer cannot afford to lose his job because if he does so, there are not hundreds of jobs waiting for him. A clause such as clause (i) of Rule 9 is against right and reason. It is wholly unconscionable. It has been entered into between parties between whom there is gross inequality of bargaining power. Rule 9(i) is a term of the contract between the Corporation and all its officers. It affects a large number of persons and it squarely falls within the principle formulated by us above. Several statutory authorities have a clause similar to Rule 9(i) in their contracts of employment. As appears from the decided cases, the West Bengal State Electricity Board and Air India International have it. Several Government companies apart from the Corporation (which is the First Appellant before us) must be having it. There are 970 Government companies with paid-up capital of Rs. 16,414.9 crores as stated in the written arguments submitted on behalf of the Union of India. The Government and its agencies and instrumentalities constitute the largest employer in the country. A clause such as Rule 9(i) in a contract of employment affecting large sections of the public is harmful and injurious to the public interest for it tends to create a sense of insecurity in the minds of those to

whom it applies and consequently it is against public good. Such a clause, therefore, is opposed to public policy and being opposed to public policy, it is void under section 23 of the Indian Contract Act."

23. There cannot be any dispute to the proposition laid down by the Apex Court in the above judgment. Rule 9(i), which came up for consideration in the above case was a power given to the Corporation to terminate the permanent employees without notice and without reason. In the present case the Scheme under which the FSEs are engaged is defined as a contractual scheme and the terms of the scheme and appointment letter clearly indicate that the FSEs are engaged on contractual basis. It was also clearly mentioned in the engagement order that Regulations, 1960 is not applicable to the engagement of FSEs. Thus, we cannot accept the submission of learned counsel for the appellants that engagement of the appellants has to be treated as engagement on regular basis and contractual engagement is arbitrary and violative of Articles 14 and 16 of the Constitution. As

noted above, employer has full authority and jurisdiction to engage temporary casual and contractual staff in exigency of service. But, the mere fact that casual, temporary and contractual staff have been engaged and allowed to continue for a few years, that itself will not entitle them to claim right for regularisation in service.

24. The Apex Court in ***National Fertilizers Ltd. v. Somvir Singh*** [(2006) 5 SCC 493] had occasion to consider regularisation of employees, who were appointed without intimation of vacancy to the Employment Exchange. The appointments were contractual and the Apex Court held that a person, who obtained recruitment on contractual basis cannot claim regularisation in service. In paragraph 2 of the judgment it was stated as follows:

"2.The respondent, thus, on his own showing was appointed on a contractual basis. It is trite that a person who obtained recruitment on contractual basis cannot claim regularisation in service...."

25. The Constitution Bench of the Apex Court in **Umadevi's case** (supra) has clearly laid down that casual/temporary members, who were appointed ad hoc basis de hors Rules cannot claim absorption or regularisation in service, even though they were allowed to continue for several years. It is useful to refer to paragraphs 26 and 33 of the judgment, which are to the following effect:

"26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent - the distinction between regularization and making permanent, was not emphasized here - can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in paragraph 50 of Piara Singh (supra) are to some extent inconsistent with the conclusion in paragraph 45 therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual

employees engaged without following the regular recruitment procedure should be made permanent.

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33. It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency an ad hoc appointment can be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization. The cases directing regularization have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment.”

26. Thus, in view of the pronouncement of the judgment by the Apex Court in ***Umadevi's case (supra)*** this Court exercising jurisdiction under Article 226 of the Constitution cannot issue any direction to absorb the contractual employees, i.e., FSEs in the regular establishment of the Corporation.

27. Learned counsel for the appellants has placed reliance on the judgment of the Apex Court in ***Nihal Singh v. State of Punjab*** (AIR 2013 SC 3547). In the

above case the Apex Court was considering the claim of Special Police Officers, who were appointed on daily wage basis in exercise of power under Section 17 of the Police Act, 1861 and they were allowed to continue and their claim for regularisation was denied by the High Court. The Special Officers took the matter to Apex Court, wherein the claim of the petitioners were allowed. The facts of the case have been noted in paragraphs 5 and 8 of the judgment, which are to the following effect:

"5. The factual background in which persons such as the appellants herein came to be appointed is recorded in the judgment in LPA No. 209 of 1992 as follows:-

"I was at the meeting held on March 24, 1984 between the Advisor to the Governor of Punjab and Senior officers of the banks in the public Sector Operating in Punjab that, after reviewing the security arrangements for banks in Punjab, it was decided that SPOs be appointed for the said purpose in terms of section 17 of the Police Act, 1861 (hereinafter referred to as the Act). This step was taken as it was felt that it would not be possible for the State Govt. to provide the requisite police guards to banks and that, thereafter, this additional force be raised, in order to do so, the banks undertook to take over the financial burden of the SPOs to be appointed, but it was clearly

understood that as per the provisions of the Act, such Police Officers would be under the discipline and control of the Senior Superintendent of Police of the district concerned. As regards their remuneration it was decided that SPOs would be paid an honorarium of Rs. 15/- per day. This was, however, later enhanced to Rs. 30/- per day. Relevant in the context of the SPOs to be appointed, was the further decision"

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8. In the background of such appointments, various persons who were appointed, including the appellants herein, approached the High Court of Punjab and Haryana from time to time seeking appropriate directions for regularisation of their services. It appears that the petitioners herein also had approached the High Court earlier in CWP No.19390 of 2001 praying that their services be regularized in the light of notification No.11/34/2000-4PP-III/1301 dated 23.1.2001. The said writ petition was dismissed by order dated 12.12.2001 directing consideration of the cases of the petitioners therein (appellants herein) in accordance with the law and pass a speaking order."

In the above case the Apex Court noticed the statutory provisions and the nature of appointment and held that appointment of the Police Officers was made in accordance with the statutory procedure contemplated under the Act. The following was laid down in paragraphs 24, 25, 29 and 32 of the judgment:

"24. Even going by the principles laid down in Umadevi's case, we are of the opinion that the State of Punjab cannot be heard to say that the appellants are not entitled to be absorbed into the services of the State on permanent basis as their appointments were purely temporary and not against any sanctioned posts created by the State.

25. In our opinion, the initial appointment of the appellants can never be categorized as an irregular appointment. The initial appointment of the appellants is made in accordance with the statutory procedure contemplated under the Act. The decision to resort to such a procedure was taken at the highest level of the State by conscious choice as already noticed by us. The High Court in its decision in LPA No.209 of 1992 recorded that the decision to resort to the procedure under section 17 of the Act was taken in a meeting dated 24.3.1984 between the Advisor to the Government of Punjab and senior officers of the various Banks in the public sector. Such a decision was taken as there was a need to provide necessary security to the public sector banks. As the State was not in a position to provide requisite police guards to the banks, it was decided by the State to resort to section 17 of the Act. As the employment of such additional force would create a further financial burden on the State, various public sector banks undertook to take over the financial burden arising out of such employment. In this regard, the written statement filed before the High Court in the instant case by respondent Nos.1 to 3 through the Assistant

Inspector General of Police (Welfare and Litigation) is necessary to be noticed. It is stated in the said affidavit:

"2. That in meeting of higher officers held on 27.3.1984 in Governor House, Chandigarh with Shri Surinder Nath, IPS, Advisor to Governor of Punjab, in which following decisions were taken:-

i) That it will not be possible to provide police guard to banks unless the Banks were willing to pay for the same and additional force could be arranged on that basis, it was decided that police guards should be requisitioned by the Banks for their biggest branches located at the Distt. and Sub-Divisional towns. They should place the requisition with the Dist. SSPs endorsing a copy of IG CID. In the requisition, they should clearly state that the costs of guard would be met by them. It will then be for the police department to get additional force sanctioned. This task should be done on a top priority. In the meantime depending upon the urgency of the need of any particular branch, police deptt. may provide from police strength for its protection.

ii) For all other branches guards will be provided by Dist. SSP after selecting suitable ex-servicemen or other able bodied persons who will be appointed as Special Police Officer in terms of Section 17 of the Police Act. Preference may be given to persons who may already be in possession of licenced weapons. All persons appointed as SPO for this purpose will be given a brief training for

about 7 days in the Police Lines in the handling of weapons taking suitable position for protection of branches. These SPOs will work under the discipline and control and as per Police Act, they will have the same powers, privileges and protection and shall be amenable to same penalty as an ordinary police personnel."

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29. *The abovementioned process clearly indicates it is not a case where persons like the appellants were arbitrarily chosen to the exclusion of other eligible candidates. It required all able bodied persons to be considered by the SSP who was charged with the responsibility of selecting suitable candidates.*

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32. *Therefore, we are of the opinion that the process of selection adopted in identifying the appellants herein cannot be said to be unreasonable or arbitrary in the sense that it was devised to eliminate other eligible candidates. It may be worthwhile to note that in Umadevi's case (AIR 2006 SC 1806 : 2006 AIR SCW 1991) , this Court was dealing with appointments made without following any rational procedure in the lower rungs of various services of the Union and the States."*

28. Thus, the case of **Nihal Singh (supra)** was on its own facts and in view of the special feature, as noted in the judgment itself, the Apex Court held the

appointment not to be irregular appointment. In the above circumstances, the Apex Court held that those employees were entitled to be regularised in service.

29. Thus, the above case is clearly distinguishable from the present case. In the present case the appointment has been offered as contractual appointment for limited period of service. Therefore, the above case cannot help the appellants in the present case.

30. Learned counsel for the appellants has also relied on ***District Transport Officer v. Kunchan*** (2009(3) KLT 954). In the above Full Bench case the Court considered the claim of daily wage drivers/conductors appointed in the Kerala State Road Transport Corporation, who were subsequently absorbed in the regular employment of the Corporation on the advice made by the Kerala Public Service Commission. The question which arose before the Full Bench was as to whether the daily wage period of the said employees could be reckoned for purpose of pension. In the above case there was a settlement between the

Corporation and the employees, wherein it was agreed that daily wage periods of such drivers and conductors, who were appointed on daily wage basis, and fulfill certain conditions, shall be reckoned for purpose of pension. The said case was on different issue and does not help the appellants in the present case.

31. In view of the foregoing discussion, we are of the view that the contractual appointment of the appellants cannot be said to be arbitrary or violative of Article 14 of the Constitution, nor the appellants can be held to have any right to claim absorption in the regular service of the Corporation. Both Issues II and III are answered accordingly.

ISSUE NO.IV

31. Now we come to the last issue, i.e., payment of provident fund, maternity leave, gratuity etc. With regard to the claim of Provident Fund, the petitioners themselves have brought on record Exhibit P6 dated 06.08.2012, which is a letter issued by the Additional Central Provident

Fund Commissioner to the Executive Director (Personnel), Life Insurance Corporation of India, Central Office, Mumbai. The letter was issued regarding the applicability of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 to the contractual employees, i.e., FSEs and SMEs. In the said letter the Additional Director wrote the following to the Executive Director:

*"Sub: Applicability of the EPF & MP Act '52
to the contractual employees (FSE &
SME) under LICI.*

Sir,

This has reference to your letter bearing no.CO/ER/Pen/1213/2006 dated 01.08.2012, copy of which has been mailed to this Office by your Zonal Office, Kolkata.

Financial Service Executives (FSEs):

Regarding the issue of extension of PF benefits to the contractual employees - Financial service Executives, the decision of the corporation to bring them under the purview of the LICI's own Provident Fund Scheme is appreciated. However while implementing the scheme it may be ensured that the PF benefits are extended right from their date of joining service and a note of confirmation to that effect may be sent to this office. If the implementation is post-facto i.e., from the date of the above decision, then they become eligible to be covered under EPF Act 1952, from their dates of joining service till the date of above decision."

33. The above clearly indicates that the Corporation has itself accepted that benefit of Provident Fund was extended to contractual employees, i.e., FSEs. Exhibit P7 letter sent from the Administrative Director of the Corporation to all Regional Managers to collect remuneration data of FSEs in the format as indicated in the letter for providing Provident Fund to FSEs was brought on record. From the above it is clear that the Corporation itself has agreed to extend the benefit of provident fund to the FSEs. In paragraph 7 of the Writ Petition the petitioners specifically pleaded about Exhibit P6 letter dated 06.08.2012 of the Additional Central Provident fund Commissioner and Exhibit P7 letter dated 23.02.2013. The Corporation in the counter affidavit, while replying paragraph 7 of the Writ Petition, pleaded in paragraph 8 as follows:

"8..... In answer to the averments contained in paragraph 7 of the writ petition is respectfully submitted that the contention of the petitioner that the benefits of provident fund and gratuity is not being extended, it is

respectfully submitted that work relating to making of provisions of the provident fund and gratuity is applicable to financial service executives is under process. Moreover it was informed to the employees and persons covered itself that there has been a decision on the part of the Life Insurance Corporation to bring the financial service executives appointed on a contract basis to bring them within the purview of the provident fund scheme. Be that may, it is submitted that the issue has no relevance to the question that has raised in the writ petition."

34. Thus, the benefit of provident fund is being extended to the petitioners as has been admitted by the Corporation. Thus, the learned Single Judge ought to have issued direction to the Corporation to complete the process for extending the benefit of Provident Fund to the members of FSEs, whereas the prayer was also made to extend the benefit of provident fund.

35. Although in paragraph 1 of the Writ Petition reference has been made to the Provident Fund, gratuity, maternity leave and other facilities, in the Writ Petition, apart from details of the claim of Provident Fund, no other pleadings have been made. Hence, in the counter affidavit

the Corporation also could not give any details regarding maternity leave or other facilities. There being no material on record to adjudicate the issue regarding maternity leave, gratuity, we deem it fit and proper to grant liberty to the petitioners to represent the claim regarding the claim of maternity leave and other facility to the first respondent, who may consider the same and take appropriate decision in accordance with law.

36. In view of the foregoing discussions, we are of the view that the judgment of the learned Single Judge in so far as it refuses the prayer of the petitioners seeking a direction to respondents 1 to 7 to regularise the FSEs has to be upheld. The prayer of the petitioners to quash the term of contractual appointment in Exhibit P1 has rightly been refused by the learned Single Judge. We, however, are of the view that the judgment of the learned Single Judge needs modification in so far as the claim of Provident Fund and other facility to the members of FSEs is concerned.

In the result, the Writ Appeal is disposed of modifying the judgment of the learned Single Judge in the following manner:

- i) ***The judgment of the learned Single Judge is upheld in so far as it dismisses the Writ Petition for the reliefs claimed in the Writ Petition, except relief No.(f).***
- ii) ***Respondents 1 to 7 are directed to extend the benefit of Provident Fund as per Exhibit P6 letter dated 06.08.2012 of the Additional Central Provident Fund Commissioner. The entire process of extending the said benefit of Provident Fund be completed within a period of three months from the date of receipt of a copy of this judgment by the first respondent.***
- iii) ***The petitioners are given liberty to submit a detailed representation to the first respondent with regard to the claim of maternity leave and other***

facilities, if any to the members of FSEs, who may consider and take a decision within a period of three months from the date of receipt of a copy of this judgment by the first respondent.

The parties shall bear their own costs.

**ASHOK BHUSHAN
ACTING CHIEF JUSTICE**

**A.M.SHAFFIQUE
JUDGE**

vgs