

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN  
&  
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

WA.NO. 2006 OF 2014 () IN WP(C).6094/2014

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AGAINST THE ORDER/JUDGMENT IN WP(C) 6094/2014  
OF HIGH COURT OF KERALA DATED 22-11-2014

APPELLANT(S)/RESPONDENTS 2 & 3:

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1. LIFE INSURANCE CORPORATION OF INDIA  
REPRESENTED BY THE ZONAL MANAGER  
LIC SOUTHERN ZONAL OFFICE, P.B NO.2450, 153  
ANNA SALAI, CHENNAI - 600 002.

2. SENIOR DIVISIONAL MANAGER  
DIVISIONAL OFFICE, JEEVAN PRAKASH, M.G.ROAD  
P.B NO. 1133, ERNAKULAM - 682 011.

BY ADV. SRI.S.EASWARAN

RESPONDENT(S)/PETITIONER & 1ST RESPONDENT:

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1. SONIA BHASKAR  
DEVELOPMENT OFFICER, SR NO. 579484, CODE NO. 376077  
L.I.C OF INDIA, BRANCH OFFICE, ANGAMALY - 683 572.

2. UNION OF INDIA  
REPRESENTED BY THE ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA  
FINANCE DEPARTMENT, NEW DELHI - 300 001.

R1 BY ADV. SRI.N.DHARMADAN (SR.)  
R1 BY ADV. SRI.M.R.VENUGOPAL  
R BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20.07.2015  
ALONG WITH W.A. NO.8 OF 2015 AND CONNECTED CASES, THE COURT ON  
03.08.2015 DELIVERED THE FOLLOWING:

“C.R.”

**ASHOK BHUSHAN, C.J.**

**and**

**A.M. SHAFFIQUE, J.**

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**W.A.No.2006 of 2014 &**

**W.A. Nos.8, 415 & 536 of 2015**

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**Dated this the 3<sup>rd</sup> day of August, 2015**

**J U D G M E N T**

Writ Appeal No.2006 of 2014 (**LIC of India and another v. Sonia Bhasker and another**) and W.A. No.8 of 2015 (**Sonia Bhaskar v. Union of India and Others**) have been filed against the same judgment of the learned Single Judge dated 22.11.2014 in W.P(C) No.6094 of 2014 filed by Smt.Sonia Bhaskar, Development Officer working in the Life Insurance Corporation of India (for short, “the LIC”) challenging her termination order. The other Writ Appeals, i.e., W.A. Nos.415 of 2015 and W.A. No.536 of 2015 have been filed against the judgment dated 26.11.2014 in W.P(C) No.30525 of 2013 filed by S.Syamkumar, Development

Officer challenging his termination order dated 27.11.2013.

2. Learned Single Judge by the impugned judgments in both the set of Writ Appeals has set aside the termination orders of the Writ Petitioners. However, prayer of the Writ Petitioners to strike down Rule 6(8) and 7(1) of the Life Insurance Corporation Development Officers (Revision of Certain Terms and Conditions of Service) Rules, 2009 was rejected. Aggrieved by the judgments of the learned Single Judge, both the Writ Petitioners and the LIC are in appeal.

3. The parties shall be referred to as noted in the Writ Petitions.

4. Brief facts of the case relating to both set of appeals are as follows:

5. Smt.Sonia Bhaskar was appointed as probationary Development Officer on 09.02.2009. On

successful completion of probation her appointment was confirmed as Development Officer on 09.02.2010. The Central Government has framed Rules, namely Life Insurance Corporation Development Officers (Revision of Certain Terms and Conditions of Service) Rules, 1989. The said Rules were superseded by another set of Rules by the Central Government, namely Life Insurance Corporation Development Officers (Revision of Certain Terms and Conditions of Service) Rules, 2009 (hereinafter referred to as “the 2009 Rules”). The 2009 Rules contemplated maintenance of expense limit and cost ratio as fixed in the Rules by the Development Officer to the eligible premium in a appraisal year. In the event the Development Officer exceeds the expense limit and cost ratio, Rules 6 and 7 provided various actions by the LIC including termination from service. Petitioner is a member of the Scheduled Caste Community. Petitioner was on maternity leave for six

months with effect from 16.08.2011 to 13.02.2012. First appraisal year of the petitioner began from 09.02.2009 till 28.02.2010. The second and third appraisal years were from 01.03.2010 to 28.02.2011 and 01.03.2011 to 29.02.2012. Petitioner by letter dated 27.02.2012 informed the Senior Divisional Manager that her cost ratio is above the point stipulated in the norms and she was on maternity leave from 16.08.2011 to 13.02.2012 during which period a baby was born, hence she could not do the required business during that period. Petitioner requested that her above period be exempted from calculating her cost ratio.

6. A notice dated 15.09.2012 was issued to the petitioner that petitioner's performance for the appraisal year ending 29.02.2012 has been assessed. It was stated that the cost ratio for the relevant appraisal year was 47.15%. The notice further stated that the cost ratio immediately preceding the appraisal

year which ended 29.02.2011 was 45.20% and as a consequence, petitioner's service was liable to be terminated under the 2009 Rules. Petitioner was asked to show cause why her services be not terminated. Petitioner submitted reply to the notice to the Senior Divisional Manager on 17.10.2012 mentioning health issues, prolonged medical treatment for infertility from August, 2010 and maternity leave from 16.08.2011 to 13.02.2012. She stated that during maternity leave she was on complete rest and restricted movement which restricted her marketing activity which affected new business performance and lack of agency recruitment. It was also stated that in the present appraisal year she brought a premium of Rs.4,55,415.60 in the first seven months. It was requested that cost during the period which she was under maternity leave be waived. The Zonal Manager also issued a notice dated 18.07.2013 asking the

petitioner to show cause as to why her services should not be terminated. Petitioner again submitted a reply on 12.09.2013 to the Zonal Manager reiterating her pleas. The Zonal Manager vide proceedings dated 27.11.2013 terminated the services of the petitioner on the ground that the cost ratio for the appraisal year ended 29.02.2012 was 47.15% and the cost ratio immediately preceding the appraisal year ended 29.02.2011 was 45.20% and the average cost ratio for these 2 years exceeded the prescribed cost ratio of 38%. With regard to the issues raised by the petitioner it was observed that other issues raised are extraneous and there is no provision in the 2009 Rules to consider those aspects. Challenging the termination order dated 27.11.2013, petitioner filed the Writ Petition praying for the following reliefs:

“(a) issue a writ of certiorari or other writ or order and quash Ext.P8 and all further steps taken by respondents 2 and 3 to terminate the service of the petitioner from the post

of Development Officer.

(b) issue a writ of certiorari or other writ or direction and quash sub rule (8) of Rule 6 and Sub Rule (1) of Rule 7 to the limited extent they affect detrimentally to the fundamental right and right to life guaranteed to the petitioner and similar development officers under Arts.14, 19 and 21 of the Constitution of India.

(c) issue such other orders as this Hon'ble Court may deem fit and necessary in the facts and circumstances of the case.”

7. In the Writ Petition a counter affidavit was filed by the LIC pleading that the Development Officer who has exceeded 38% of the cost ratio in the relevant appraisal year and the year preceding by virtue of Rules 6(8) and 7(1) of the 2009 Rules, his/her services were liable to be terminated and no error has been committed in the termination of service. It was pleaded that it was not open for the petitioner to contend that her maternity leave period ought to have been excluded from the calculation of cost ratio. The fact of maternity leave of six months was known to the petitioner. It is contended that service means the period spent on duty

as Development Officer and leave including extraordinary leave. Hence there is no provision to exclude the remuneration paid during the maternity leave period. The period spent on maternity leave is a period spent on duty. It was contended that there were other Development Officers belonged to SC Community who achieved the cost ratio. It is contended that petitioner's plea for declaring Rules 6(8) and 7(1) of the 2009 Rules as arbitrary is without any merit. The validity of the Rules has already been upheld by a Division Bench of the Allahabad High Court in W.A. No.53292 of 2010 (**Vivek Anand v. LIC of India and Others**) decided on 06.12.2012. The LIC pleaded that the Writ Petition be dismissed.

8. The learned Single Judge by judgment dated 22.11.2014 rejected the submission of the petitioner that the Rules are arbitrary and ultra vires. The learned Single Judge however held that definition of 'annual

remuneration' as given in the 2009 Rules does not include leave salary. Inclusion of leave salary in annual remuneration is a clear violation of the statutory definition. It was also held that leave salary paid during maternity leave if included in the annual remuneration for the purpose of using it for boosting up the figures of annual remuneration in order to extract more business from the Development Officer, it is gross violation of the object, purpose and scope of the Maternity Benefit Act. The learned Single Judge held that reply of the petitioner to the show cause notice has not been considered and the order Exhibit P8 deserves to be set aside. Learned Single Judge disposed of the Writ Petition quashing Exhibit P8 and other steps taken by respondents 2 and 3 to terminate the service of the petitioner. Both the Writ Petitioner as well as the LIC are aggrieved and have come up in the Writ Appeals.

9. Writ Appeal No.415 of 2015 (**LIC of India**

**and another v. S. Syamkumar and another)** and W.A. No.536 of 2015 (**S.Syamkumar v. Union of India and another**) have been filed against the judgment of the learned Single Judge dated 26.11.2014 in W.P(C) No.30525 of 2013 filed by S.Syamkumar, Development Officer working in the Life Insurance Corporation of India challenging his termination order.

10. Writ Petitioner, S.Syamkumar was appointed as Development Officer on 11.08.2008 and he completed his probation on 09.02.2009. When the 2009 Rules were given effect to from 12.11.2009, the first year of appraisal of the petitioner was continuing. The LIC issued Exhibit P5 notice to the petitioner on 30.01.2013 informing that the cost ratio for the relevant appraisal year ending 30.09.2012 is 41.98%. Petitioner was informed that his service is liable to be terminated under the 2009 Rules. Petitioner was asked to show cause regarding the discrepancies, if any in the

figures relating to his performance within 15 days. Petitioner submitted his reply before the Senior Divisional Manager on 16.02.2013. Petitioner stated that he belongs to SC Community. Several pleas were made in Exhibit P6, reply. He also pleaded that leave salary paid to the Development Officer cannot be included in the annual remuneration which leave salary need to be deducted. Unpaid wages also need to be deducted. Petitioner also filed a Writ Petition, being W.P(C) No.21662 of 2013 when his service was sought to be terminated. This Court vide judgment dated 10.09.2013 disposed of the Writ Petition directing the LIC to reconsider the matter after considering the contentions raised by the petitioner in ground H of his representation. The petition was also directed to be considered taking into consideration the Division Bench judgment in W.A. No.53292 of 2010 (**Vivek Anand v. LIC of India and Others**). After the order of this

Court, the Zonal Manager issued proceedings dated 27.11.2013 by which petitioner's service were terminated on the expiry of three months from the date of receipt of the order in accordance with 2009 Rules. Petitioner's request for forgoing portion of the annual remuneration exceeding 38% was also not accepted observing that there is no provision to forgo the salary in the 2009 Rules. Challenging the proceedings dated 27.11.2013 petitioner filed the Writ Petition praying for the following reliefs:

“(a) issue a writ of certiorari or other writ or order and quash Ext.P1 and all further steps taken by respondents 2 and 3 to terminate the service of the petitioner from the post of Development Officer.

(b) issue a writ of certiorari or other writ or direction and quash sub rule (8) of Rule 6 and Sub Rule (1) of Rule 7 to the limited extent they affect detrimentally to the fundamental right and right to life guaranteed to the petitioner and similar development officers under Arts.14, 19 and 21 of the Constitution of India.

(c) issue a writ of certiorari or other writ or direction and set aside the reduction of “eligible minimum” from 25% in 1989 Rules to 22% in the 2009 Rules and fixation of 38%

as “cost ratio” in Sub Rule (8) of Rule 6 of 2009 Service Rules from 50% provided in Rule 7(8) of 1989 Rules without any guidelines is arbitrary and illegal as also unsustainable in law;

(d) declare that the fixation of 22% as “eligible minimum” and 38% as “cost ratio” in Sub Rule (8) of Rule 6 of the 2009 Service Rules have no nexus to the object sought to be achieved in this behalf and therefore it is ultra vires the provisions of Arts.14, 19 and 21 of the Constitution of India and LIC Act and the Staff Regulations and Rules governing the Service Conditions of the Development Officers working in LIC;

(e) issue such other orders as this Hon'ble Court may deem fit and necessary in the facts and circumstances of the case.”

11. Counter affidavit has been filed by the LIC where the pleas raised by the petitioner were refuted. It was pleaded that in accordance with the 2009 Rules, the petitioner exceeded the cost ratio for the relevant appraisal year and the year preceding to the relevant year. All the directions of this Court in W.P(C) No.21662 of 2013 have been complied with. Petitioner's performance throughout was unsatisfactory hence

there is no infirmity in the termination order. Petitioner's plea that salary received on Sundays and other Holidays has to be excluded cannot be accepted. Petitioner's argument regarding exclusion of privilege leave from the annual remuneration is also unacceptable.

12. Learned Single Judge by judgment dated 26.11.2014 although rejected the petitioner's plea of setting aside Rules 6(8) and 7(1) of the 2009 Rules, held that the salary received during privilege leave and amount of wage cut are to be deducted from the annual remuneration and noted that if the aforesaid amounts are deducted the cost ratio would be 38.4% and rounding off the said figure the cost ratio would be 38%. Hence it cannot be said that the petitioner has exceeded the cost ratio. With the aforesaid observation the Writ Petition was disposed of setting aside Ext.P1 order.

13. Writ Petitioner aggrieved by the judgment of the learned Single Judge in so far as it rejected the plea to annul Rules 6(8) and 7(1) of the 2009 Rules has come up in Writ Appeal. The LIC aggrieved by the judgment of the Single Judge setting aside the termination order has come up in the Writ Appeal.

14. We have heard Shri N.Dharmadan, Senior Advocate for the Petitioners and Shri George Cherian, Senior Advocate and Shri S.Easwaran for the LIC and perused the records.

15. Shri N.Dharmadan, learned Senior Advocate appearing for the petitioners submitted that Rules 6(8) and 7(1) of the 2009 Rules are arbitrary, void and liable to be set aside since they would affect the fundamental right of the petitioners and other similarly situated Development Officers guaranteed under Articles 14, 19 and 21 of the Constitution of India. It is submitted that the Zonal Manager under the Rules have been given

unbridled powers with no guidelines and hence the Rules have to be struck down. The learned Single Judge ought to have considered the case of the petitioners in the light of the fact that Government of India have granted several concessions to SC/ST candidates. It is submitted that the benefit of Maternity Benefit Act which is applicable for the petitioner in W.P(C) No.6094 of 2014 has not been given due credence. Rules 6(8) and 7(1) are unreasonable and arbitrary since blank power has been given to the Zonal Manager to terminate the services of the petitioners without any obligation to consider any good cause shown by a Development Officer. Mechanical application of power by the Zonal Manager has resulted in arbitrariness.

16. Shri S.Easwaran, learned counsel for the LIC refuting the above submissions of the learned Senior Advocate for the petitioners contended that the

validity of Rules 6(8) and 7(1) has already been upheld by the learned Single Judge. It is submitted that the LIC is a business organization and Rules have been framed by the Central Government under Section 48 of the Life Insurance Corporation Act, 1956 to give effect to the policy of the LIC. It is submitted that Rules pertaining to the cost ratio and expense limit are the Rules which give effect to the policy of the Government and LIC. Rules are neither arbitrary nor ultra vires to any provision of the Act or the Constitution of India. There is valid classification under the 2009 Rules. The Rules are not in excess of the power of the Central Government which is the rule making authority. The 2009 Rules are unambiguous and clear and the learned Single Judge did not commit any error in upholding the Rules. Individual hardships are no ground to issue direction to the LIC to act contrary to the Rules.

17. Learned counsel for the LIC in support of W.A.

No.2006 of 2014 filed by the LIC contended that the learned Single Judge committed error in quashing the termination orders. It is submitted that maternity leave benefit which are available to the female employees have been fully extended in the case of petitioner in W.P(C) No.6094 of 2014, six months' leave as well as salary for the period has been given to the petitioner. The salary received by the petitioner during maternity leave cannot be excluded from computation of annual remuneration. The scheme of the 2009 Rules does not manifest to exclude the salary received by the petitioner during the period of maternity leave or during the period of any sick leave. The learned Single Judge committed error in coming to the conclusion that annual remuneration does not include leave salary.

18. Shri George Cherian, learned Senior Advocate appearing for the LIC in W.A. No.415 of 2015 submitted that the learned Single Judge committed error in taking

the view in excluding the salary received on account of privilege leave or wage cut from the annual remuneration. It is submitted that the learned Single Judge excluding the salary received for privilege leave, wage cut, etc., has come to the conclusion that cost ratio is only 38.4% which if rounded come to 38% and hence it cannot be said that the petitioner crossed the ratio of 38%. It is submitted that the above assumption of the learned Single Judge is against the statutory Rules. The Rules does not contemplate that in the annual remuneration salary received on account of privilege leave or salary of Sundays and Public Holidays can be excluded. It is submitted that petitioner in W.P (C) No.30525 of 2013 having exceeded the cost ratio during the relevant appraisal year and the year preceding to the relevant year was rightly terminated and there was no ground in the Writ Petition to set aside Exhibit P1 order.

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

20. From the submissions of the learned counsel for the parties and the pleadings on record, the following are the issues which arise for consideration in these appeals.

**I. Whether Rules 6(8) and 7(1) of the 2009 Rules confer arbitrary and unguided power in the hands of the Zonal Manager of the LIC to terminate the service of Development Officer which Rules ought to have been struck down by the learned Single Judge?**

**II. Whether according to Rule 6(8) of the 2009 Rules when a Development Officer exceeds the cost ratio of 38% it is obligatory and mandatory for the Zonal Manager to terminate the service of the Development Officer?**

**III. What is the Scope and extent of opportunity as contemplated under Rule 7(1) of the 2009 Rules to a Development Officer who has**

**exceeded the cost ratio?**

**IV. Whether it is open for the Zonal Manager of the LIC to consider any explanation given by the Development Officer in his reply to the show cause notice giving sufficient cause for not able to achieve the cost ratio despite the Development Officer exceeding the cost ratio as fixed in the Rule?**

**V. Whether in computing the annual remuneration of petitioner in W.P(C) No.6094 of 2014, salary received during maternity leave period has to be excluded in the context of appraisal of the work of the Development Officer in the relevant year?**

**VI. Whether while computing the annual remuneration of the petitioner in W.P(C) No.30525 of 2013, the emoluments received during the period of privilege leave and wage cut have to be excluded with reference to the appraisal of the work of the Development Officer for the relevant year?**

21. Before we proceed to examine the above issues it is relevant to note the statutory provisions covering the field.

22. The Life Insurance Corporation of India Act, 1956 (for short, "the Act") was enacted to provide for

the nationalization of life insurance business in India by transferring all such business to a Corporation established for the purpose and to provide for the regulation and control of the business of the LIC and matters connected therewith and incidental thereto. The LIC thus has been constituted to carry on life insurance business. Functions of the LIC are defined in Section 6. Section 48 of the Act provides that the Central Government may by Notification in the Official Gazette make rules to carry out the purposes of the Act. Section 48(2)(cc) provides as follows:

**“48. Power to make rules.-**

.....

48(2)(cc). the terms and conditions of service of the employees and agents of the Corporation, including those who became employees and agents of the Corporation on the appointed day under this Act.”

Section 48(2A) which is relevant is extracted below:

“48(2A). The regulation and other provisions as in force immediately before the commencement of the Life Insurance Corporation (Amendment) Act, 1981 with respect to

the terms and conditions of service of employees and agents of the Corporation including those who became employees and agents of the Corporation on the appointed day under this Act, shall be deemed to be rules made under clause (cc) of sub-section (2) and shall be subject to the other provisions of this section, have effect accordingly.”

Under Section 49, the LIC is empowered to make Regulations. The LIC in exercise of its power under Section 49 has made Regulations, namely Life Insurance Corporation of India (Staff) Regulations, 1960 (for short, “the 1960 Regulations). The LIC has one of its Officers known as Development Officers. Earlier Development Officers were known as field Officers. In exercise of the power under Section 48(2)(cc), Central Government has framed Rules, namely Life Insurance Corporation Development Officers (Revision of Certain Terms and Conditions of Service) Rules, 1989. The Central Government subsequently made another set of Rules, viz., Life Insurance Corporation Development Officers (Revision of Certain Terms and Conditions of Service)

Rules, 2009 dated 12.11.2009. As per Notification dated 12.11.2009 Rules have been framed for regulating certain terms and conditions of Development Officer in the LIC of India. Rule 2 is the definition clause. Rule 2 (b) is quoted below:

“2(b) “annual remuneration” means the basic pay, special pay, personal pay, dearness allowance, and all other allowances and non-profit sharing or ex- gratia bonus due to, or paid to, a Development Officer during the appraisal year and includes the expenses payable or reimbursed to him or incurred by the Corporation during that year in respect of travelling, residential telephone, mobile, insurance premium and taxes on motor vehicles, but does not include incentive bonus paid to him in accordance with rule 13.”

Rule 2(e) defines the cost ratio which is to the following effect:

(e) “cost ratio” in relation to a Development Officer means the ratio which his annual remuneration in any year bears to the eligible premium of that year and expressed as a percentage of such eligible premium.”

Development Officer is defined under Rule 2(g), eligible premium is defined under Rule 2(i) and

expense limit is defined under Rule 2(j), which are to the following effect:

“(g) “Development Officer” means a whole-time salaried employee of the Corporation belonging to Class II appointed as a Development Officer.

(i) “eligible premium” means such proportion as may be specified by the Corporation from time to time on the first year’s premiums received by the Corporation in respect of the business secured by the agents in the organisation of a Development Officer, which is adjusted in the relevant appraisal year;

(j) “expense limit” in respect of an appraisal year in relation to a Development Officer working in an operational area specified in column (1) of the Table below (hereinafter referred to as the “Table of Expense Limit”) means the percentage of the eligible premium of that year as specified in the corresponding entry in column (2) thereof and it shall apply to the Development Officers who have been confirmed in the services of the Corporation on a date prior to the date of publication of these rules in the Official Gazette”.

Rules uses two phrases, expense limit and cost ratio. Expense limit of Development Officer for any appraisal year is expressed as the percentage of eligible premium of that year. Rule 6 contains the heading “opportunity to conform to the expense limit”. The Development

Officer whose annual remuneration in the preceding year or years is in excess of the expense limit are dealt with by awarding disincentives. Rule 6(8) which is relevant for the present case is quoted below.

“6(8) Notwithstanding anything contained in sub rules (1) to (7) where the annual remuneration of a Development Officer in any preceding year (hereafter in this sub-rule referred to as the “relevant year”) exceeds 38% of the eligible premium of that year and the aggregate of the annual remuneration in the relevant year and the appraisal year immediately preceding the relevant year exceeds 38% of the aggregate of the eligible premium in those two years, his services shall be liable to be terminated in accordance with rule 7.”

Rule 7 provides for termination of services of a Development Officer which is quoted below:

“7(1) Where a Development Officer has failed to conform to the expense limit and where no opportunity to conform to such limit could be given under the provisions of rule 6, the Zonal Manager may terminate his services after giving him three months notice or salary in lieu thereof:

Provided that the Development Officer shall be given an opportunity to show cause against such proposed termination of his service.”

## **ISSUE No.I**

23. Issue No.I relates to the validity of Rules 6(8) and 7(1) of the 2009 Rules. Petitioners have submitted that the above Rules are arbitrary and unbridled power has been given to the Zonal Manager to terminate the service of the Development Officer. It is submitted that service under the Rules is arbitrary and unguided exercise of power. It is submitted that there is no valid reason for subjecting only Development Officers with the termination under the Rules and no such cost ratio or expense limit is imposed with regard to other category of employees of the LIC. It is submitted that Rule 6(8) is harsh, unreasonable and arbitrary. There are no principle or policy for guiding the exercise of discretion by the Zonal Manager. In the absence of any guiding principle in the exercise of principle, the rule deserves to be struck down as contravening Article 14 of the Constitution. It is submitted that provisions of

providing for termination on the ground that Development Officer exceeds cost ratio is an unconscionable term in contract of service and is void. Petitioners and the LIC are not on equal bargaining power and the petitioners are forced to accept the terms and conditions as imposed by the Rules. A *Damocles Sword* is always hanging on a Development Officer and a small breach of the cost ratio results in termination of service. Rules do not provide or give any benefit to the said category of persons of SC/ST and woman. The provision is harsh and oppressive. Provisions of Rules 6(8) and 7(1) which are under attack have already been extracted above. Rule 6(8) begins with a non-obstante clause which provided that where the annual remuneration of a Development Officer in any preceding year (hereafter in this sub-rule referred to as the "relevant year") exceeds 38% of the eligible premium of that year and the aggregate of the annual

remuneration in the relevant year and the appraisal year immediately preceding to the relevant year exceeds 38% of the aggregate of the eligible premium in those two years, his services shall be liable to be terminated in accordance with Rule 7. Termination thus contemplated is termination on account of not being able to conform to the cost ratio as provided in the Rules. The Notification by which Rules have been enforced clearly indicate that Rules framed by the Central Government regulating terms and conditions relating to business purpose of Development Officers of the LIC. Whether business performance of Development Officer can be the basis for termination is the question which has been canvassed by the petitioners. Submission of the petitioners that there are no guidelines for exercise of termination by the Zonal Manager does not appear to be correct. Cost ratio, annual remuneration and eligible premium are the concepts which have been clearly

defined in Rule 2. The appraisal of a Development Officer is based on the eligible premium which is procured by him as compared to the annual remuneration received by him. The LIC being carrying on life insurance business, the requirement in the Rules to achieve a particular target cannot be said to be a provision which is in excess of the power of the Central Government which has framed the Rules. The terms and conditions of service are to be regulated by the Rules framed by the Central Government. Central Government having been delegated the power to fix terms and conditions of service it has power to frame terms and conditions including terms and conditions providing for purpose of appraisal of business on the basis of the work done by a Development Officer. Learned counsel for the petitioners has relied on a judgment of the Apex Court in **Moti Ram v. N.E. Frontier Railway** (AIR 1964 SC 600). The Apex Court

had occasion to consider Rules 148(3) and 149(3) of the Railway Establishment Code in the said case. Rule 149 (3) provided termination of railway servants on notice on either side for the periods shown in the Code. In the above context while considering the challenge to Rule on the anvil of Article 14 of the constitution, the following was observed in paragraphs 112 and 113:

“112. It is necessary now to consider the second ground urged by the appellants, viz., that R. 148(3) contravenes Art. 14 of the Constitution. Two contentions are urged in support of this ground. First, it is urged that the Rule gives no guidance to the authority who would take action on it as regards the principle to be followed in exercising the power. Secondly, it is urged that the Rule discriminates between railway servants and other public servants. In my opinion, there is considerable force in the first contention. Classifying the statutes which may come up for consideration on a question of its validity under Art. 14 of the Constitution in 1959 SCR 279 : (AIR 1958 SC 538) this Court observed under the third class of such statutes thus:

"A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only

because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the government in the matter of the selection or classification."

113. Applying the principle laid down in the above case to the present Rule, I find on scrutiny of the Rule that it does not lay down any principle or policy for guiding the exercise of discretion by the authority who will terminate the service in the matter of selection or classification. Arbitrary and uncontrolled power is left in the authority to select at its will any person against whom action will be taken. The Rule, thus enables the authority concerned to discriminate between two railway servants to both of whom R. 148(3) equally applied by taking action in one case and not taking it in the other. In the absence of any guiding principle in the exercise of the discretion by the authority the Rule has therefore to be struck down as contravening the requirements of Art. 14 of the Constitution."

The Apex Court held that in the said case the rule does not lay down any principle or policy for guiding exercise of discretion by the authority who will terminate the service. Rules 148(3) and 149(3) were quoted by the Apex Court in paragraphs 6 and 7 which are to the following effect:

"6. At this stage, it would be convenient to refer to the two Rules. Rule 148 deals with the termination of service and periods of notice. Rule 148(1) deals with temporary Railway servants; R. 148 (2) deals with apprentices, and R. 148(3) deals with other (non-pensionable) railway servants. It is with R. 148(3) that we are concerned in the present appeals. It reads thus :-

"(3) Other (non-pensionable) railway servants :-

The service of other (non-pensionable) railway servants shall be liable to termination on notice on either side for the periods shown below. Such notice is not however required in cases of dismissal or removal as a disciplinary measure after compliance with the provisions of Clause (2) of Art. 311 of the Constitution, retirement on attaining the age of superannuation, and termination of service due to mental or physical incapacity."

"Note:-The appointing authorities are empowered to reduce or waive at their discretion, the stipulated period of notice to be given by an employee, but the reason justifying their action should be recorded. This power cannot be re-delegated."

The follow the respective periods for which notice has to be given. It is unnecessary to refer to these periods.

We may incidentally cite Rule 148 (4) as well which reads thus :-

"In lieu of the notice prescribed in this rule, it shall be permissible on the part of the Railway Administration to terminate the service of a railway servant by paying him the pay for the period of notice".

It is thus clear that R. 148(3) empowers the appropriate authority to terminate the services of other non-pensionable railway servants after giving them notice for the specified period, or paying them their salary for the said period in lieu of notice under R. 148(4).

7. The non-pensionable services were brought to an end in November, 1957 and an option was given to the non-pensionable servants either to opt for pensionable service or to continue on their previous terms and condition of service. Thereafter R. 149 was framed in place of R. 148. Rule 149(1) and (2) like R. 148 (1) and (2) deal with the temporary railway servants and apprentices respectively. Rule 149(3) deals with other railway servants; it reads thus:-

"Other railway servants:-The services of other railway servants shall be liable to termination on notice on either side for the periods shown below. Such notice is not, however, required in cases of dismissal or removal as a disciplinary measure after compliance with the provisions of clause (2) of Art. 311 of the Constitution, retirement on attaining the age of superannuation, and termination of service due to mental or physical incapacity".

The Rule then specifies the different periods for which notice has to be given in regard to the different categories of servants. It is unnecessary to refer to these periods."

24. The Apex Court in the context of the above Rule held that the Rule having not laying down any principle or policy for guiding the exercise of discretion

are arbitrary and has to be struck down. The said judgment cannot be applied to the facts of the present case where the basis on which action of termination is contemplated is the cost ratio as the basis of appraisal of performance.

25. Next case relied on by the learned counsel is **Central Inland Water Transport Corporation Ltd. v. Bojo Nath** (AIR 1986 SC 1571). In the above case the Apex Court was considering Rule 9(i) of Central Inland Water Transport Corporation Ltd. Service Discipline and Appeal Rules, 1979. Rule 9(i) which fell for consideration has been extracted in paragraph 9 which is to the following effect:

"9. Termination of Employment for Acts other than Misdemeanour.

(i) The employment of a permanent employee shall be subject to termination on three months' notice on either side. The notice shall be in writing on either side. The Company may pay the equivalent of three months' basic pay and dearness allowance, if any, in lieu of notice or may deduct a like amount when the employee has failed to give due notice."

The Apex Court while considering the Rule held that the Court when called upon to do so is to strike down an unfair and unreasonable contract or any unfair and unreasonable contract between two parties who are not equal in bargaining power. It was held that the above principle applies in contracts which contains terms unfair and unreasonable that they shock conscience of the court and opposed to the public policy are required to be adjudged void. It was held that Rule 9(i) confers power to terminate service of a permanent employee by giving notice which is nothing but a naked hire and fire rule. It was further held that there are no guidelines whatever laid down to indicate under what circumstance the power given under Rule 9(i) is to be exercised by the Corporation. The following was laid down in paragraphs 98 and 99:

“98. Rule 9(i) confers upon the Corporation the power to terminate the service of a permanent employee by giving him three months' notice in writing or in lieu thereof to pay him

the equivalent of three months' basic pay and dearness allowance. A similar regulation framed by the West Bengal State Electricity Board was described by this Court in *West Bengal State Electricity Board v. Desh Bandhu Ghosh*, (1985) 3 SCC 116: (AIR 1985 SC 722) (at page 118) (of SCC : (at p. 723 of AIR) as:

"...a naked 'hire and fire' rule, the time for banishing which altogether from employer-employee relationship is fast approaching. Its only parallel is to be found in the Henry VIII clause so familiar to administrative lawyers."

As all lawyers may not be familiar with administrative law, we may as well explain that "the Henry VIII clause" is a provision occasionally found in legislation conferring delegated legislative power, giving the delegate the power to amend the delegating Act in order to bring that Act into full operation or otherwise by Order to remove any difficulty, and at times giving power to modify the provisions of other Acts also. The Committee on Ministers' Powers in its report submitted in 1932 (Cmd. 4060) pointed out that such a provision had been nicknamed the Henry VIII clause" because "that King is regarded popularly as the impersonation of executive autocracy". The Committee's Report (at page 61) criticised these clauses as a temptation to slipshod work in the preparation of bills and recommended that such provisions should be used only where they were justified before Parliament on compelling grounds. Legislation enacted by Parliament in the United Kingdom after 1932 does not show that this recommendation had any particular effect.

99. No apter description of Rule 9(i) can be given than to call it "the Henry VIII Clause". It confers absolute and

arbitrary power upon the Corporation. It does not even state who on behalf of the Corporation is to exercise that power. It was submitted on behalf of the Appellants that it would be the Board of Directors. The impugned letters of termination, however, do not refer to any resolution or decision of the Board and even if they did, it would be irrelevant to the validity of Rule 9(i). There are no guidelines whatever laid down to indicate in what circumstances the power given by Rule 9(i) is to be exercised by the Corporation. No opportunity whatever of a hearing is at all to be afforded to the permanent employee whose service is being terminated in the exercise of this power. It was urged that the Board of Directors would not exercise this power arbitrarily, or capriciously as it consists of responsible and highly placed persons. This submission ignores the fact that however highly placed a person may be, he must necessarily possess human frailties. It also overlooks the well-known saying of Lord Acton, which has now almost become a maxim, in the Appendix to his "Historical Essays and Studies", that "power tends to corrupt, and absolute power corrupts absolutely." As we have pointed out earlier, the said Rules provide for four different modes in which the services of a permanent employee can be terminated earlier than his attaining the age of superannuation, namely, R. 9(i), R. 9(ii), sub-cl. (iv) of Cl. (b) of R. 36 read with R. 38 and R. 37. Under R. 9(ii) the termination of service is to be on the ground of "services no longer required in the interest of the Company." Sub-cl. (iv) of Cl. (v) of R. 36 read with R. 38 provides for dismissal on the ground of misconduct. Rule 37 provides for, termination of service at any time without any

notice if the employee is found guilty of any of the acts mentioned in that Rule. Rule 9(i) is the only Rule which does not state in what circumstances the power conferred by that Rule is to be exercised. Thus, even where the Corporation could proceed under Rule 36 and dismiss an employee on the ground of misconduct after holding a regular disciplinary inquiry, it is free to resort instead to R. 9(i) in order to avoid the hustle of an inquiry. Rule 9(i) thus confers an absolute, arbitrary and unguided power upon the Corporation. It violates one of the two great rules of natural justice - the audi alteram partem rule. It is not only in cases to which Art. 14 applies that the rules of natural justice come into play. As pointed out in *Union of India v. Tulsiram Patel*, (1985) 3 SCC 398 (at page 46-3) : (AIR 1985 SC 1416 at p. 1451). "The principles of natural justice are not the creation of Art. 14. Art. 14 is not their begetter but their constitutional guardian." That case has traced in some detail the origin and development of the concept of principles of natural justice and of the audi alteram partem rule (at pages 463-480) (of (1985) 3 SCC : (at pp. 1451-1463 of AIR). They apply in diverse situations and not only to cases of State action. As pointed out by O. Chinnappa, Reddy, J., in *Swadeshi Cotton Mills v. Union of India*, (1981) 2 SCR 533, 591 : (AIR 1981 SC 818, 846-47) they are implicit in every decision-making function, whether judicial or quasi-judicial or administrative. Undoubtedly, in certain circumstances the principles of natural justice can be modified and, in exceptional cases, can even be excluded as pointed out in *Tulsiram Patel's case* (AIR 1985 SC 1416). Rule 9(i), however, is not covered by any of the situations which would

justify the total exclusion of the audi alteram partem rule.”

In the above case Rule 9(i) was struck down since it provided for termination of even permanent employees by three months' notice which was held to be unconscionable clause in the contract of service and further there was no guidelines to exercise the power. The said case cannot be held to be applicable in the present case.

26. To the same effect is another judgment relied on by the learned Senior Advocate for the petitioners in **Delhi Transport Corporation v. D.T.C. Mazdoor Congress** (AIR 1971 SC 101).

27. A Division Bench judgment of this Court in **Kumhabdulla v. State of Kerala** (2000 [3] KLT 45) has been relied where it was held that in the absence of statutory guidelines vesting of unguided and unbridled power cannot be held to be valid merely because the power is to be exercised by a high office.

The Division Bench was considering Section 10A of the Representation of People Act. The said case is also clearly distinguishable and not applicable to the present case.

28. The judgment of the Apex Court in **Kathi Raning v. State of Saurashtra** (AIR 1952 SC 123) has been relied by the learned Senior Advocate for the petitioners to contend that there is no valid classification for singling out only Development Officers for being governed by the 2009 Rules. In the above case the Apex Court itself has held that if the legislative policy is clear and definite and as an effective method of carrying out the policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discretionary legislation. The said judgment does not help the petitioners in the facts

of the present case since here Rules have been framed for Development Officer whose terms and conditions of service have been laid down by a rule making authority which has been delegated the power to make rules.

29. Learned counsel Shri S.Easwaran appearing for the LIC has submitted that the challenge on the ground that there is no valid classification for subjecting the Development Officer to the Rules pertaining to expense limit and cost ratio has already been upheld. He has referred to the judgment of the High Court of Allahabad in W.A. No.53292 of 2010 (**Vivek Anand v. LIC of India and Others**) decided on 06.12.2012. He has also referred to paragraph 34 of the judgment which is to the following effect:

“34. The contention of the learned counsel for the petitioner that the rules were discriminatory, because they picked up only the Development Officers and left out the Assistant Branch Managers as well as Branch Managers, cannot be accepted. Admittedly, the post of Assistant Branch Managers is a promotion post and is separate cadre,

therefore, the plea of discrimination is unsustainable. Further, in the present day of competitive business environment, if the Central Government is of the view that the Development Officers can be removed for non-performance, it is policy decision, which cannot be lightly questioned without specifically disclosing violation of any constitutional provision or provisions of the Life Insurance Corporation Act. Accordingly, we do not find any good ground to hold that the provisions of the Rules 2009 are ultra vires.”

Another judgment which has been relied by the learned counsel for the LIC is the Division Bench judgment of the Patna High Court in **Bipin Bihari Sinha and Others v. Union of India and Others** (1981 PLJR 597). It is submitted that in the Division Bench the Sixth Amendment Regulations, 1978 - Life Insurance Corporation Field Officers (Alteration of Remuneration and Terms and Conditions of Service) Order, 1957 was under challenge. The ground that the provision is discriminatory was also considered by the Patna High Court and repelled in paragraph 17 of the judgment which is relevant and is quoted below:

“17. Lastly, it was contended that the petitioners have been discriminated by the impugned order and regulations, inasmuch as the terms and conditions of other class of employees have not been altered. The petitioners constitute a separate class of employees of the Corporation and there is no question of discrimination, if any provision covers a class of employees.”

It was further submitted by the learned counsel for the LIC that in the said case expense ratio of 25% which was under challenge was also upheld. Learned counsel has referred to paragraph 44. The challenge on the ground of Articles 14 and 16 were also considered in paragraphs 56, 57 and 58 and repelled. Paragraphs 56, 57 and 58 which are relevant are extracted below:

“56. It remains now to consider the contention that 'the Order and Regulations' impugned are ultra vires Articles [14](#) and [16](#) of the Constitution. Both the Articles safeguard the right to equality of a person. Both forbid discrimination between persons similarly situate in the matter of employment without there being a reasonable basis for the same. It was contended by Shri Chatter-jee on behalf of the petitioners that the one of the classes of the employees of the Corporation viz. the Development Officers have been singled out for hostile discriminatory treatment in the matter

of remuneration and other conditions of service like security of tenure. It is clear that the remuneration and even security of tenure of the Development Officers have, by 'the Order and the Regulations', been linked up with their operational efficiency judged with reference to the ratio of the expenses incurred upon their remuneration etc. to the eligible premium i.e., the first year's premium of new business or renewal premium secured through agents working in their area, if, in an appraisal year their remuneration etc. exceeds the expense limit, i.e, its ratio to the eligible premium is more than 22%, or 23%, or 24%, or in some case 25%, as the case may be, the Development Officers may not earn the increment in the scale, and if the excess is very great may even have their salaries reduced and in same circumstances, may run the risk of termination of their services. The remuneration and tenure of other staff of the Corporation is not so linked up. Shri Chatterjee contends that this amounts to discrimination prohibited by Articles [14](#) and [16](#) of the Constitution because as recognised by the settlement of 1971, the Development Officers are an integral part of the establishment of the Corporation and they should have the same security of tenure as the other classes of the employees of the Corporation.

57. It is now well established that while Article [14](#) forbids class legislation, it does not prohibit reasonable classification. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things

which are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to this object sought to be achieved by the statute Sri Ram Krishna Dalmia's case ([MANU/SC/0024/1958](#) : AIR 1958 SC 538).

58. That there is an intelligible criteria differentiating the Development Officers from the other employees of the Corporation cannot be gain said. They form a well recognised class, separate and distinct from all other classes of employees of the Corporation. The only question is whether the differentia has a reasonable relation to the object sought to be achieved by 'the Order' and the Regulations. The object of 'the Order' and the Regulations is, as I have said, to link up the remuneration and security of tenure of a class of employees viz. Development Officers with the income derived from the new business procured and thereby regulate the costs of development of business with which Development Officers are concerned. The question therefore, is if there is a reasonable basis for so linking up the remuneration and tenure of service of one class of employees of the Corporation viz. the Development Officers, alone. In my opinion, there is. As has been pointed out in the counter-affidavit showing cause on behalf of the respondents, unlike the other classes of employees, the Developments Officers have no fixed hours of work, and are not subject to the daily discipline of office and as such their performance can be judged only with reference to the business brought in by the agents working in their area under their supervision. And it cannot be denied that for

judging the operation efficiency of the Development Officers we have to take into consideration not only the amount of business procured by the agents working in their area but also the costs incurred in procuring the business. Their remuneration and tenure of service may, there (sic) well be linked up with the income from the new business even though the (sic) and tenure of other employees is not so linked up. There are other methods available for determining the efficiency and devotion to work of other classes of employees. The classification cannot, therefore, be said to be unreasonable. It is well settled "that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds; that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be clearest." per Das, C. J. in Ram Krishna Dalmla's case (supra) (at 548). In view of the circumstances stated above, it can well be said that according to the deemed need for linking up the remuneration and security of tenure with the income derived from the development of the business it was their concern, was clearest in the case of the Development Officers. It must also be remembered that the Central Government and the Corporation had before them the report of Morarka Committee that the performance of the Development Officers was not satisfactory and its recommendations their remunerations should be linked up with the cost of procuring new business. The contention

based on Articles [14](#) and [16](#) must, therefore, also fail.

30. Learned counsel for the LIC has also relied on the judgment of the Apex Court in **National Insurance Co. Ltd. v. General Insurance Development Officers Assn.** ([2008] 5 SCC 472). The Apex Court was considering the provisions contained in General Insurance (Rationalisation of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 2003. In the above Scheme cost norms were also introduced. Challenge to the scheme was raised in different High Courts. Cost ratio was similarly defined in the 2003 Scheme as has been defined in the 2009 Rules. Paragraphs 5 and 7 are relevant which are relevant are quoted below:

“5. Now by the 2003 amendment single cost system has been introduced whereby the cost system for the purposes has been withdrawn by deleting the proviso to clause 7.

The comparison table is as follows:

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| Development | Applicable | Existing | Applicable in relation |
|-------------|------------|----------|------------------------|
|-------------|------------|----------|------------------------|

| Officer<br>operating<br>at city/town | in increment<br>as per 203<br>cost ratio | cost ratio | to incentives<br>as per 2003<br>cost ratio | existing<br>cost ratio |
|--------------------------------------|------------------------------------------|------------|--------------------------------------------|------------------------|
| <b>A. Cities</b>                     | <b>7%</b>                                | <b>8%</b>  | <b>7%</b>                                  | <b>7%</b>              |
| <b>B.Cities/Towns</b>                | <b>8%</b>                                | <b>9%</b>  | <b>8%</b>                                  | <b>8%</b>              |
| <b>C.Other Centres</b>               | <b>10%</b>                               | <b>11%</b> | <b>10%</b>                                 | <b>10%</b>             |

7. "Cost ratio" is the ratio expressed as percentage of cost incurred on a person of the development staff to the scheduled premium income procured through him during the concerned year."

The challenge was noted in paragraph 14 which is to the following effect:

"14. Withdrawal of para 12 through the 2003 amendment pushes the development officer into an extreme difficulty in achieving the premium targets and fulfilling the cost norms. This not only results in monetary loss in the form of non core allowance but also leads to decrements thereby adversely affecting the service conditions."

The Apex Court in the above case held that there is no scope for interference because essentially a policy decision was reflected in the Rules. In paragraph 23 the following was stated:

"23. It is true as contended by learned counsel for

the writ petitioners that a personal factor has a role to play notwithstanding the overall importance of the entity. With opening of economy there is a remarkable change in the various sectors including the insurance sector. Since modifications appear to have been done for the purpose of rationalization, there is no scope for interference because essentially a policy decision is immune from judicial review unless it is founded on no rational basis or material to justify the change in policy.”

31. Shri S.Easwaran further submitted that the subordinate legislation can be challenged on the limited ground, i.e., subordinate legislation is contrary to the parent statute or it violates any constitutional right. He referred to the judgments of the Apex Court in **Indian Express Newspapers v. Union of India** ([1985] 1 SCC 641) and **Maharashtra State Board of Secondary and High Secondary Education v. Parithosh Bhupeshkumar Sheth** ([1984] 4 SCC 27). The Apex Court in the later case held that it will be wholly wrong for the court to substitute its own opinion for that of the Legislature or its delegate as to what principle or policy

would best serve the objects and purpose of the Act. The following was laid down in paragraphs 14 and 16.

“14. We shall first take up for consideration the contention that clauses (3) of Regulation.104 is ultra vires the regulation-making powers of the Board. The point urged by the petitioners before the High Court was that the prohibition against the inspection or disclosure of the answer papers and other documents and the declaration made in the impugned clause that they are "treated by the Divisional Board as confidential documents" do not serve any of the purposes of the Act and hence these provisions are ultra vires. The High Court was of the view that the said contention of the petitioners had to be examined against the backdrop of the fact disclosed by some of the records produced before it that in the past there had been a few instances where some students possessing inferior miters had succeeded in passing off the answer papers of other brilliant students as their own by tampering with seat numbers or otherwise and the verification process contemplated under Regulation.104 had failed to detect the mischief. In our opinion, this approach made by the High Court was not correct or proper because the question whether a particular piece of delegated legislation - whether a rule or regulation or other type of statutory instrument - is in excess of the power of subordinate legislation conferred on the delegate has to be determined with reference only to the specific provisions contained in the relevant statute

conferring the powers to make the rule, regulation, etc. and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It would be wholly wrong for the Court to substitute its own opinion for that of the Legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court. The impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the Legislature and its delegate to determine, as a matter of policy, how the provisions of the statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the statute. Though this legal position is well established by a long series of

decisions of this Court, we have considered it necessary to reiterate it in view of the manifestly erroneous approach made by the High Court to the consideration of the question as to whether the impugned clause (3) of Regulation.104 is ultra vires. In the light of the aforesaid principles, we shall now proceed to consider the challenge levelled against the validity of the Regulation.104(3).

16. In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious. The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitutions. None of these vitiating factors are shows

to exist in the present case and hence there was no scope at all for the High Court to invalidate the provision contained in clause (3) of Regulation.104 as ultra vires on the grounds of its being in excess of the regulation-making power conferred on the Board. Equally untenable, in our opinion, is the next and last ground by the High Court for striking down clause (3) of Regulation.104 as unreasonable, namely, that it is in the nature of a by-law and is ultra vires on the ground of its being an unreasonable provision. It is clear from the scheme of the Act and more particularly, S.18, 19 and 34 that the Legislature has laid down in broad terms its policy to provide for the establishment of a State Board and Divisional Boards to regulate matters pertaining to secondary and higher secondary education in the State and it has authorised the State Government in the first instance and subsequently the Board to enunciate the details for carrying into effect the purposes of the Act by framing regulations. It is a common legislative practice that the Legislature may choose to lay down only the general policy and leave to its delegate to make detailed provisions for carrying into effect the said policy and effectuate the purposes of the statute by framing rules/regulations which are in the nature of subordinate legislation. S.3(39) of the Bombay General Clauses Act, 1904, which defines the expression 'rule' states : "Rule shall mean a rule made in exercise of the power under any enactment and shall include any regulation made under a rule or under any enactment". It is important to notice that a distinct power of making bye laws has been conferred by the Act on the State

Board under S.38. The Legislature has thus maintained in the statute in question a clear distinction between 'bye laws' and 'regulations'. The bye laws to be framed under S.38 are to relate only to procedural matters concerning the holding of meetings of the State Board, Divisional Boards and the Committee, the quorum required, etc. More important matters affecting the rights of parties and laying down the manner in which the provisions of the Act are to be carried into effect have been reserved to be provided for by regulations made under S.36. The Legislature, while enacting S.36 and 38, must be assumed to have been fully aware of the niceties of the legal position governing the distinction between rules/regulations properly so called and bye laws. When the statute contains a clear indication that the distinct regulation-making power conferred under S.36 was not intended as a power merely to frame bye laws, it is not open to the Court to ignore the same and treat the regulations made under S.36 as mere bye laws in order to bring them within the scope of justiciability by applying the rest of reasonableness.”

In the above case the Apex Court has also noted the grounds on which a subordinate legislation can be challenged. In paragraph 18 the following was stated:

“18. In the light of what we have stated above, the constitutionality of the impugned regulations has to be adjudged only by a three-fold test, namely, (1) whether the

provisions of such regulations fall within the scope and ambit of the power conferred by the statute on the delegate; (2) whether the rules/regulations framed by the delegate are to any extent inconsistent with the provisions of the parent enactment and lastly (3) whether they infringe any of the fundamental rights or other restrictions or limitations imposed by the Constitution. We have already held that the High Court was in error in holding that the provisions of clause (3) of Regulation.104 do not serve the purpose of carrying into effect the provisions of the Act and are ultra vires on the ground of their being in excess of the regulation-making power conferred by S.36. The writ petitioners had no case before the High Court that the impugned clauses of the regulations were liable to be invalidated on the application of second and third tests. Besides the contention that the impugned regulations were ultra vires the power conferred under S.36(1), the only other point urged was that they were in the nature of bye laws and were liable to be struck down on the ground of unreasonableness.”

From the grounds as has been noted by the Apex Court, it is clear that Rules 6(8) and 7(1) of the 2009 Rules cannot be held to be in excess of the rule making power of the Central Government nor it can be said that it violated any of the provisions of the parent Act, i.e, the 1956 Act. The Rules cannot be said to lacking guidelines

for exercise of the power since cost ratio and expense limit which are the basis for exercising power for termination have been well defined in the Rules and explained. The LIC being a Corporation carrying on life insurance business it is the wisdom of the rule making authority to frame policies and effectuate the said policy by statutory provisions. The court is not the best judge to enquire whether the policy is good or bad or whether any better policy could have been framed.

32. The learned Single Judge has considered all the submissions of the petitioners and rightly repelled the challenge of the petitioners and did not commit any error in refusing the prayer to struck down Rules 6(8) and 7(1) of 2009 Rules. We thus hold that no error was committed by the learned Single Judge in refusing to strike down Rules 6(8) and 7(1) of the 2009 Rules by the impugned judgment. Provisions of Rules 6(8) and 7(1) are held to be valid except to the interpretation and

clarification made hereinafter while considering the subsequent Issues in this case.

### **ISSUE NOS.II, III & IV**

33. These Issues being interconnected, are taken together. Sub-rule (8) of Rule 6 as extracted above indicates that the sub-rule (8) has given an overriding effect on sub-rules 1 to 7 of Rule 6. It provides that where annual remuneration of Development Officer in any preceding year exceeds 38% of the eligible premium of that year and the aggregate of the annual remuneration in the relevant year and the appraisal year immediately preceding the relevant year exceeds 38% of the aggregate of the eligible premium in those two years, "his service shall be liable to be terminated" in accordance with Rule 7. The words used in sub-rule (8) 'shall be liable to be terminated' are in a mandatory form providing for termination of service as mentioned in the rule. Rule 7(1) has also been made applicable by

virtue of Rule 6(8). Rule 7(1) provides that the person shall be given an opportunity to show cause against such proposed termination of his service. When Rule 6 (8) provides in a mandatory form that where the annual remuneration in any preceding year exceeds 38% of the eligible premium of that and the appraisal year immediately preceding the relevant year exceeds 38% of the aggregate of the eligible premium in those two years, his services shall be liable to be terminated, what is the ambit and extent of opportunity as has been contemplated to proviso to Sub-rule (1) of Rule 7 is the question to be answered. Exhibit P8 termination order in W.P.(C) No.6094 of 2014 (W.A. No.8 of 2015) indicates that although the General Manager has noted the grounds taken by the petitioner in her reply to the show cause notice, the order only confined to the cost ratio and the performance of the Development Officer. Zonal Manager in his order clearly held that the issues raised

by the petitioner are extraneous and there is no provision in the special rule to consider this aspect. It is useful to quote the reasons given in the order passed by the Zonal Manager dated 25.11.2014:

“I have carefully considered her submissions and proceed to issue the order as follows:

I observe that the Development Officer had undertaken tours for 180 days in the appraisal year 2010, 94 days in the year 2011, 99 days in the year 2012. The performance was showing a declining trend every year.

The Number of agents had come down from 30 to 16. Hardly there were any recruitment of agents and only 5 agents were appointed in the appraisal year ending Feb.2012. The cost ratio for the appraisal year ended 29.02.2012 was 47.15% and the cost ratio for the immediately preceding appraisal year ended 29.02.2011 was 45.20% and so also the average cost ratio for these 2 years exceeded the prescribed cost ratio of 38%. I find that no serious effort was made by the Development Officer to improve her performances even though the expected work norms were made known much earlier. Other issues raised are extraneous and there is no provision in the Special Rules, 2009 to consider these aspects. Therefore, I do not agree with the contentions of the Dev.officer.

And whereas I am satisfied from the records that her performance as well as her reply dated 12.09.2013 to the

show-cause notice dated 18.07.2013 that no further opportunity falls to be given to her to conform to the expense limit in accordance with the provisions of the Life Insurance Corporation of India Development Officers (Revision of Certain Terms and Conditions of Service) Rules, 2009.

Hence, I, therefore, order that the services as a Development Officer shall stand terminated on the expiry of 3 months from the date of receipt of this order by her in terms of the said provisions of the Life Insurance Corporation of India Development Officers (Revision of Certain Terms and Conditions of Service) Rules, 2009.”

34. The reasons for not adverting to or accepting any of the explanations given by the petitioner were expressed by the Zonal Manager in the letter as **“other issues raised are extraneous and there is no provision in the Special Rule 2009 to consider these aspects”**. Thus the Zonal Manager has proceeded to terminate the services of the petitioner on the ground that consideration of other issues as raised in the explanation by the Development Officer are not permissible to be considered in accordance with the 2009 Scheme. What is the intendment of the Scheme

regarding the above is relevant to be noted. Rule 6 contains a heading “opportunity to conform to the expense limit”. Rule 6(1) (2) , (3), (4) and (5) which are relevant are extracted below:

**“6. Opportunity to conform to the expense limit:**

(1) Where the annual remuneration of any Development Officer in the preceding year or years is in excess of the expense limit, his services shall not be terminated merely on that ground if his case is capable of being dealt with by awarding disincentives, subject to the provisions of rule 8, from the relevant appraisal date as provided in the Table of Disincentives, so as to afford him an opportunity to conform to the expense limit:

Provided that for the purpose of award of disincentives in accordance with the Table of Disincentives, his performance shall be appraised with reference to the annual remuneration and the prescribed expense limit applicable to him.

Table of Disincentives

| Sl.No | Where the cost ratio is in excess of prescribed limit | Disincentives where the cost ratio is in excess of prescribed limit in the appraisal year next preceding the relevant appraisal date. |                                   |                                                 |
|-------|-------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|-------------------------------------------------|
|       |                                                       | On the first occasion                                                                                                                 | On the second successive occasion | On the third and subsequent successive occasion |

| Sl.No | Where the cost ratio is in excess of prescribed limit                                                           | Disincentives where the cost ratio is in excess of prescribed limit in the appraisal year next preceding the relevant appraisal date. |                                 |                                  |
|-------|-----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|----------------------------------|
| 1     | By not more than 2% (Provided that the cost ratio in the appraisal year is not more than 32%).                  | NIL                                                                                                                                   | NIL                             | NIL                              |
| 2     | By more than 2% but not more than 4% (Provided that the cost ratio in the appraisal year is not more than 32%). | No increment                                                                                                                          | No increment                    | No increment                     |
| 3     | By more than 4% (Provided that the cost ratio in the appraisal year is not more than 32%).                      | No increment                                                                                                                          | No increment                    | No increment and one decrement   |
| 4     | Where the cost ratio in the appraisal year is more than 32% but not more than 35%.                              | No increment                                                                                                                          | No increment and one decrement  | No increment and two decrements. |
| 5     | Where the cost ratio in the appraisal year is more than 35%.                                                    | No increment and one decrement                                                                                                        | No increment and two decrements | No increment and two decrements. |

**Note:**

For the purposes of this Table:-

(a) "no increment" means non grant of increment;

(b) "decrement" means reduction in basic pay by one or more stage/s.

**Explanation :**

(i) The application of Table of Disincentives shall be subject to the provisions contained in rule 8 provided the services of the Development Officer are not liable to be

terminated under sub-rule (2) or sub-rule (8) of this rule.

(ii) For the purpose of the Table of Disincentives, the annual remuneration of a Development Officer shall be deemed to be in excess of the prescribed expense limit on a successive occasion if such remuneration exceeds such expense limit in two consecutive appraisal years even though the excess percentage over the prescribed expense limit may vary and an appraisal year in which the Development Officer exceeds the prescribed expense limit even though there is no disincentive shall be reckoned for ascertaining whether the expense limit is exceeded on successive occasions and the disincentive on the successive occasion shall correspond to the excess of the prescribed expense limit in the appraisal year next preceding the relevant appraisal date.

(iii) The Table of Disincentive shall be repeatedly applied, if, after conforming to the prescribed expense limit, the Development Officer exceeds it again at a later date.

(2) If as a consequence of the application of the provisions contained in sub-rule(1) the basic pay arrive at falls below the minimum of the grade applicable to the Development Officer, his basic pay shall be fixed at such minimum as applicable to Development Officer:

Provided that the fixation of basic pay at minimum under this sub-rule shall not be allowed more than once during the entire service of a Development Officer and if, on a second occasion, the basic pay so arrive at falls below such minimum, his services shall be liable to be terminated in accordance with rule 7.

(3) Where the basic pay of a Development Officer is reduced or fixed under sub-rule (1) or sub-rule (2) (hereinafter referred to as “the revised basic pay”), he shall be allowed only such allowances and other benefits as are admissible on that basic pay:

Provided that there shall be no protection of the annual remuneration either by granting a personal allowance or otherwise; and no arrears of pay or any allowance for the past period consequent on his conforming to the expense limit later on shall be payable.

(4) The appointing authority shall be the competent authority for implementing the provisions of sub-rules (1) (2) and (3) and it shall determine the matters specified in the said sub-rules, as soon as may be, after the expiry of the relevant appraisal year:

Provided that the competent authority concerned shall, before deciding any matter under this rule, give an opportunity to the Development Officer to make a representation.

(5) Where the representation received under proviso to sub-rule (4) discloses,

(a) any factual inaccuracies in the computation of eligible premium or other figures, the competent authority shall revise his decision to the extent it is warranted by the revised figures and pass appropriate orders disposing of the representation:

(b) any cause beyond the control of the Development Officer, such as accident or sickness which warrants relaxation on the expense limit and he pleads that the award of disincentives should not be effected on that ground, the

competent authority shall forward the representation to the Zonal Manager, for decision. ”

35. A perusal of sub-rule (5) of Rule 6 indicates that apart from the factual inaccuracies in the computation of eligible premium or other figures, a Development Officer can also submit an explanation with regard to any cause beyond the control of Development Officer warranting relaxation on the expense limit. This statutory Scheme indicates that in so far as the expense limit is concerned, any cause such as accident or sickness can be raised and action can be avoided. Rule 6(8) does not indicate anything regarding the nature of cause which can be put forward by the Development Officer for his defence. But when the proviso to Rule 7(1) uses the words that the Development Officer shall be given an opportunity to show cause against the proposed termination, he is free to submit any valid cause and it cannot be read in a manner that consideration of any valid cause is

excluded. In the event the cause shown by the Development Officer in the reply to the notice of termination under Rule 7(1) is acceptable, whether the Zonal Manager can drop the notice of termination or by Rule 6(8) which mandates in mandatory form that services of Officer shall be liable to be terminated, is he bound to terminate? In the event interpretation to Rule 6(8) is accepted to be mandatory termination, the provision contemplated under Rule 7(1) becomes an empty formality and useless. Reading of the word 'shall' in Rule 6(8) mandatory shall make the proviso to Rule 6(8) arbitrary and unreasonable. With regard to the expense limit, the Development Officer is entitled to submit a cause such as accident or sickness, why cannot he put such cause in reply to the notice under Rule 7(1) when he has exceeded the cost ratio? There cannot be any such classification between the exceeding expense limit and cost ratio in so far as the

grounds for show cause are concerned. Any valid cause on the part of Development Officer can resist an action as contemplated by Rule 6 and various sub-rules of Rule 6 and the similar causes can also be held capable of resisting any action of termination under Rule 6(8) read with Rule 7(1). Any other interpretation will lead to the the mandatory requirement of termination as arbitrary and unreasonable.

36. The word 'shall' used in Rule 6(8) has to be read down to save it from becoming unconstitutional. The principle of 'reading down' is elaborately explained by the Apex Court in its judgment reported in **Subramanian Swamy and others v. Raj through Member, Juvenile Justice Board and another** ([2014] 8 SCC 390). Explaining the doctrine of reading down the following was laid down by the Apex Court in paragraph 61:

“61. Reading down the provisions of a Statute cannot be resorted to when the meaning thereof is plain and

unambiguous and the legislative intent is clear. The fundamental principle of the “reading down” doctrine can be summarized as follows. Courts must read the legislation literally in the first instance. If on such reading and understanding the vice of unconstitutionality is attracted, the Courts must explore whether there has been an unintended legislative omission. If such an intendment can be reasonably implied without undertaking what, unmistakably, would be a legislative exercise, the Act may be read down to save it from unconstitutionality. The above is a fairly well established and well accepted principle of interpretation which having been reiterated by this Court time and again would obviate the necessity of any recall of the huge number of precedents available except, perhaps, the view of Sawant, J. (majority view) in *Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Others*, 1991 Supp (1) SCC 600 which succinctly sums up the position is, therefore, extracted below.

“255. It is thus clear that the doctrine of reading down or of recasting the Statute can be applied in limited situations. It is essentially used, firstly, for saving a Statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible — one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the Legislature to enact the Statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the Statute are vague and ambiguous and it is possible to gather the intentions of the Legislature from the object of the Statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is

clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the Court to remake the Statute. Its only duty is to strike it down and leave it to the Legislature if it so desires, to amend it. What is further, if the remaking of the Statute by the Courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the Statute requires extensive additions and deletions. Not only it is no part of the Court's duty to undertake such exercise, but it is beyond its jurisdiction to do so.””

37. The reading down of the word 'shall' in Rule 6 (8) has become necessary for two reasons. Firstly non-consideration of any genuine cause given by the Development Officer in reply to the notice of termination violates the principle of natural justice and fair play and secondly the statutory scheme as delineated in Rule 7 (1) where an opportunity is contemplated against show cause necessarily has to be read as acceptance of any valid ground submitted by the Development Officer in reply to the notice for termination and in any event if valid cause is shown, the termination notice has to be dropped.

38. There is one more reason due to which we

fortify our above conclusion. Rule 7(2) provides that an appeal against an order passed under sub-rule(1) of Rule 7 shall lie to the Managing Director. Rule 7(2) reads as under:

“(2) An appeal against an order passed under sub-rule (1) shall lie to the Managing Director and the provisions of rules 41, 42, 43, 44 and 45 of the staff rules shall, so far as may be, apply to any such appeal.”

39. In the case of an appeal under Rule 7(2) the Managing Director shall consider the records of the case and pass orders on merits having regard to the circumstances of the case. The words used in Rule 7(3) “pass orders on merits having regard to the circumstances of the case” clearly indicates that the appellate authority is fully empowered to consider the case which includes the show cause by Development Officer having regard to the circumstances of the case. The words 'circumstances of the case' clearly indicate that the circumstances of the case as pleaded by the

Development Officer in his defence have to be taken into consideration while taking a final decision. If the appellate authority can be said to have the power to consider the 'circumstances of the case', it cannot be said that the Zonal Manager, while considering the show cause given under Rule 7(1) cannot advert to the explanation given by the Development Officer.

40. In W.P.(C) No.6094 of 2014 (W.A. No.2006 of 2014) the petitioner, in the appraisal year, was on maternity leave for six months from 16.08.2011 to 13.02.2012. She, apart from other explanation, has submitted that due to the reason that being on maternity leave, she was unable to work due to which she could not bring sufficient business to the Corporation. It will be useful to quote the following two paragraphs of her reply submitted to the notice given by the Senior Divisional Manager. Her reply reads as under:

“I am a graduate in Chemical Engineering and belong to scheduled caste. I am a native of Vazhithala near Todupuzha in Idukki Dist. I got married on 13.09.2009 at the age of 34 years. After evaluation of my personal health and as my age was on the higher side, immediately after my marriage, I had to undergo a prolonged medical treatment for infertility from 08/2010 onwards under Dr.Tity Chacko of Lakshmi Hospital, Ernakulam and continued it till 12/2010. During that period of treatment I was under various medicines and was advised for restricted travel and complete rest. Apart from the new agony, the restriction resulted in the reduction in my movements and activities which affected my business productivity. This is evident from my FYRP statement for the period 08/10 to 12/10. By god's grace I conceived during December 2010 and thereafter was under treatment of Dr.Gisy Kurian of KG Hospital Angamaly. She also advised me to be very cautious regarding my health and also of the baby and advised me rest and restricted movements. I was under maternity leave from 16.08.2011 to 13.02.2012. During the period I was advised for more caution and very restricted movements.

Therefore during the entire period from August 2010 to February 2012, I was practically on complete rest and restricted movement restricting my marketing activity which affected my new business performance and lack of agency recruitment resulting in severe reduction in my premium income which is evident from my FYRP statements for the relevant period. To add to my problem my son had some

congenital problems and was under continuous treatment for three months. This also resulted in reduction in my business as I was not in a correct frame of mind and had to attend my son regularly and be by his side as a mother., But for this natural and forced situation concerning my health and family I would have continued to do good business and remained as an incentive earner.”

41. Learned Senior Advocate for the petitioners has placed reliance of the Maternity Benefit Act, 1961. He submits that the said Act gives protection to a woman against working during the period of maternity leave and when she is unable to work during the period inclusion of the said period for calculating the cost ratio is unjust. He has referred to Section 4 of the Act which provides that Employment of or work by, women prohibited during certain periods. Section 4(1) and (2) reads as follows:

**“4. Employment of or work by, women prohibited during certain periods.-** (1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

(2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.”

42. In the 1960 Regulations six months' maternity leave is permissible to a woman worker as per Regulation 66. According to Regulation 69(5) an employee on maternity leave is also entitled to draw leave salary equal to the salary drawn preceding the day on which she proceeded on such leave. Regulations 66 and 69(5) of the 1960 Regulations are quoted below :

“66. The competent authority may grant to a female employee maternity leave for a period which may extend upto 3 months subject to a maximum of 12 months during the entire period of an employees service.

69(5) Maternity Leave, Special Leave and Quarantine Leave : An employee on maternity leave, special leave or quarantine leave shall draw leave salary equal to the salary he drew on the day preceding that on which he proceeded on such leave.”

43. There is no dispute that the employer have granted maternity leave for six months and petitioner

has been drawing salary for the aforesaid period. Learned Senior Advocate for the petitioner has also placed reliance on the judgment of Apex Court reported in **Municipal Corporation of Delhi v. Female Workers** (AIR 2000 SC 1274). The Apex Court in the said case has held that the employer has to be considerate and sympathetic towards female worker and must realise the physical difficulties which a worker woman would face in performing her duties in the work place. Following was laid down in paragraph 30 :

“30. A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. When who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the work place

while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre or post-natal period.”

44. In view of the provisions of the Maternity Benefit Act, 1961, the 1960 Regulations and the pronouncement of the Apex Court as noted above, we are of the clear view that the fact that the petitioner was granted maternity leave for six months period and during that period she could not perform her duties is the relevant factor, was liable to be considered by the Zonal Manager and this ground was specifically taken by the petitioner in her reply to the show cause notice. Learned counsel for the LIC at this juncture submitted that the Development Officer need not work personally soliciting the business, rather, the work is done through the agents who work under the supervision of the

Development Officer. The submission of the learned counsel for the LIC is too specious to be accepted. The Development Officer who is given the responsibility to ensure business for the LIC through agent is also required to work herself or himself for achieving the object. The absence of work for six months in performing the duty shall definitely have an adverse effect on her performance and the submission of learned counsel for the LIC that factum of petitioner being on maternity leave, was not relevant to be considered, has to be rejected. In view of the forgoing discussions our answer to Issue Nos.II, III and IV are as follows:

**Issue No.II. Under Rule 6(8) of the 2009 Rules in event the Development Officer has exceeded the 38% of the eligible premium, it is not mandatory for the Zonal Officer to terminate the services of the Development Officer. The word 'shall' in Rule 6(8) has to be read down as 'may'.**

**Issue No.III. Under the proviso to Rule 7(1) a**

**Development Officer can submit any valid explanation in reply to the termination notice and the Zonal Manager is obliged to consider such explanation and it cannot be said that any ground apart from the figures of annual remuneration and cost ratio is prohibited.**

**Issue No.IV. It is obligatory for the Zonal Manager to consider the explanation given by the Development Officer and take a decision and in the event there is any valid explanation for not achieving the cost ratio, the termination notice can be validly dropped.**

#### **ISSUE NO.V**

45. The issue is as to whether while computing the annual remuneration, the salary received during the maternity leave period has to be excluded in the context of appraisal of work by the Development Officer. Whether the salary received by the Development Officer during the maternity leave period can be included in the definition of annual remuneration as per Rule 2(b). The 2009 Rules does not refer to any grant of leave including leave salary. The definition of salary and

leave salary, are contained in the 1960 Regulations. In the 1960 Regulations, Regulation 3(i) defines salary in the following words:

“(i) “Salary” means the basic pay, additions to basic pay after reaching maximum of the scale of pay, dearness allowance, additional dearness allowance, special allowance payable to Class-III and Class-IV employees, functional allowance, house rent allowance, city compensatory allowance, personal allowance, special area allowance, conveyance allowance, graduation allowance, fixed personal allowance, hill allowance, special allowance for passing examinations wherever payable to Class-III employees but excludes all other allowances and overtime payments.”

46. Service is defined in Regulation 3(j), which is to the following effect:

“(j) “Service” means the period spent on duty and leave including extraordinary leave.”

47. The employees of the LIC are entitled to be granted following kinds of leave as enumerated in Regulation 60B:

“60B. Subject to the provisions of these Regulations the following kinds of leave may be granted to an employee:

(1) Casual Leave

(5) Maternity Leave

- |                          |                      |
|--------------------------|----------------------|
| (2) Privilege Leave      | (6) Special Leave    |
| (3) Sick Leave           | (7) Quarantine Leave |
| (4) Extraordinary Leave” |                      |

48. As noted above, Regulation 69(5) provides that “an employee on maternity leave, special leave or quarantine leave shall draw leave salary equal to the salary he drew on the day preceding that on which he proceeded on such leave”. An employee on leave is treated to be in service as per the definition of service given in Regulation 3(j). Thus the employee while on maternity leave get leave salary which is included in service. The emolument received during the maternity leave has to be included which is within the definition of annual remuneration. The mere fact that the 'annual remuneration' used in Rule 2(b) does not use leave salary it cannot lead to the conclusion that salary received by an employee during the leave period is to be excluded from annual remuneration. There is one more reason due to which the contention that salary

received during the maternity period has to be excluded from the annual remuneration has to be rejected. Rules 2009 indicate that appraisal of work of a Development Officer is based on the annual remuneration received by the employee as compared to the eligible premium which has been brought during the relevant period. Whatever be the amount the LIC spent on an employee except any incentive bonus paid to employee which has been specifically excluded from the definition of Rule 2 (b) had to be taken into consideration while computing the cost ratio. The very concept of cost ratio is related to the amount which has been received by the Development Officer during a relevant period. The Corporation has paid salary during the maternity leave period and it cannot be said that the said amount is not to be included in the expenses, which was borne by the Corporation, while paying the salary to the employee. We are thus of the clear opinion that remuneration

received by the petitioner during the maternity period has to be included while computing the annual remuneration and the said period cannot be excluded. However, as observed above, the fact that the employee was on maternity leave for six months is a relevant fact for considering her explanation in reply to the notice as provided under Rule 7(1) as has already been observed above.

#### **ISSUE NO.VI**

49. In W.P.(C) No.30525 of 2013 (W.A. No.415 of 2015) the petitioner claimed that he was on privilege leave for a period of 15 days + 15 days and there was a wage cut amounting to Rs.786/-. The petitioner's case was that the aforesaid period is to be excluded from the annual remuneration and the cost ratio comes only to 38.4%. Learned Single Judge noted the following in paragraphs 27, 28 and 29 as follows:

“27. The petitioner points out that the following are the

privilege leave, Sunday salary, wage cuts etc. which were to be excluded.

|                                       |                |
|---------------------------------------|----------------|
| PL-15 days 29.12.2011 to 12.01.2012   | : Rs.10,912.65 |
| (privilege leave)                     |                |
| PL - 15 days 02.08.2012 to 16.08.2012 | : Rs.10,568.92 |
| Wage cut 28.12.2012                   | : Rs.786.45    |
|                                       | .....          |
|                                       | Rs.22,268.02   |
|                                       | =====          |

There is no dispute regarding these figures.

28. Undoubtedly, the aforesaid amount should not have been included in the annual remuneration of the petitioner. If the aforesaid amount is excluded from the annual remuneration of the petitioner, the calculation would be as under:

|                                    |                   |
|------------------------------------|-------------------|
| Annual remuneration of the period  | : Rs.2,60,689.59- |
| during the second appraisal period | Rs. 22,628.02     |
|                                    | .....             |
|                                    | Rs.2,38,421.57    |
|                                    | =====             |

Premium brought in by the petitioner  
during the same appraisal period : Rs.6,20,872.80  
Therefore, the cost ratio is :  $\frac{2,38,421.57 \text{ (annual remuneration)}}{6,20,872.80 \text{ (premium brought in the year)}} \times 100$   
: 38.4%

When it is rounded off to nearest whole number, the cost ratio would be 38%

29. Therefore, it cannot be said that the petitioner has crossed the cost ratio of 38% during the said year. If the marginal increase of .4% has to be taken into account, one more opportunity should have been given to the petitioner for improving his position. It was too harsh on the part of the respondent Corporation to terminate the service of the petitioner on account of the marginal difference of the

percentage fixed by the Corporation.”

50. The learned Single Judge has accepted the contention of the petitioner that the salary received during the privilege leave is to be excluded. The privilege leave is defined in the 1960 Regulations. Regulation 69(2) and 63(1) read as under:

“69(2) Privilege Leave : An employee on privilege leave shall, during the period of privilege leave, draw leave salary equal to the salary he drew on the day preceding the date on which he proceeded on leave.

63(1) The amount of privilege leave earned shall be one-eleventh part of duty. “Duty” means the period spent in the service of the Corporation but excludes periods of leave of any kind except casual leave and quarantine leave.”

51. According to Regulation 69(2) an employee on privilege leave draw leave salary equal to the salary he drew on the day of preceding the date on which he proceeded on leave. As noted above, the period spent on duty and leave are included in service as per the definition of 'service' under the 1960 Regulations and an employee receives salary including salary for the

privilege leave, it cannot be said that the said amount is to be excluded while computing the annual remuneration under the 2009 Rules. Entitlement of salary on different kinds of leave is regulated by the statutory regulation and the said salary received by the employee cannot be excluded from computing annual remuneration. The reasons given by us above while considering the matter; the salary received by an employee during maternity leave; squarely applies with regard to the consideration of privilege leave also and we are of definite opinion that privilege leave salary received during the privilege leave period is part of the annual remuneration received by the employee.

52. In view of the forgoing discussions where we have held that no grounds were made out to strike down Rules 6(8) and 7(1), W.A. Nos. 8 and 536 of 2015 are dismissed.

53. W.A. No.2006 of 2014 has been filed by the

LIC against the judgment of learned Single Judge by which Ext.P8 termination order has been set aside. We have already held the fact that the petitioner could not work for a period of six months during the relevant appraisal year on account of she being on maternity leave was a relevant factor which was not considered by the Zonal Manager while issuing the order of termination. The order of termination of Ext.P8 cannot be upheld. We thus are of the view that learned Single Judge has rightly set aside Ext.P8 order of termination, for the reasons mentioned above. Thus W.A. No.2006 of 2014 is dismissed.

54. W.A. No. 415 of 2015 has been filed by the LIC against the judgment dated 26.11.2014 passed in W.P.(C) No.30525 of 2013 whereby learned Single Judge has quashed Ext.P1 order terminating the service of the petitioner. As noted above the learned Single Judge in paragraphs 27, 28 and 29 has come to the conclusion

that by excluding the period of privilege leave, the cost ratio was only 38.4% which was rounded off and thus became 38%. Hence the LIC decided to terminate the petitioner. We have already come to the conclusion that salary received by the employee on privilege leave cannot be excluded from calculating the annual remuneration as contemplated by 2006 Rules. Hence we are of the opinion that the decision of learned Single Judge setting aside Ext.P1 order and the reason given having been found not correct, W.A. No.415 of 2015 filed by the Corporation deserves to be allowed. Hence it is allowed and the order of learned Single Judge setting aside Ext.P1 cannot be sustained. However, under Rule 7(2), there being right of appeal against the termination order, Ext.P1, we are of the view that the petitioner shall be granted an opportunity to file an appeal before the Managing Director against his termination order, Ext.P1 dated 27.11.2014. We further

observe that in the event the petitioner files an appeal before the Managing Director within four weeks, the Managing Director shall consider the appeal in accordance with law and in the light of the observation made in this judgment. The order of learned Single Judge impugned in W.A .No.415 of 2015 setting aside Ext.P1 order is quashed and the writ petition is disposed of with the aforesaid liberty to the petitioner. W.A. No.415 of 2015 is allowed to the above extent.

All the Writ Appeals are decided accordingly.

Parties shall bear their costs.

**ASHOK BHUSHAN,  
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,  
JUDGE.**