Dy. Director of Ele. Education
Kang[illegible] Dharamsh[illegible]
23 APR 2025
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NO. EDN -KGR(E-I)TGT–Court case-2025-
Office of the Dy. Director of Elementary Education,
Kangra at Dharamshala.
Dated: - Dharamshala the -04-2025.
Email id: ddeekangratgtbranch@gmail.com

To

All the Principals-cum-Block Project Officers,
Distt. Kangra H.P.
(GSSS Paprola, GSSS Daroh, GSSS Chadiar, GSSS Chachian, GSSS Dadasiba, GSSS Dharamshala (G), GMSSS Dehra, GSSS Fatehpur, GSSS Indora, GSSS Jawali, GMSSS Kotla, GMSSS Khundian, GSSS Lambagaon, GSSS Nagrota Bagwan (G), GSSS Nagrota Surian, GSSS New Kangra, BTCGMGSSS Nurpur, GSSS Rajpur, GSSS Raja Ka Talab, GSSS Rakkar (Dehra), GSSS Shahpur, GSSS Thural, GSSS Dheera)

Subject:- **Implementation of judgment in r/o TGT's on the analogy of CWP(T) 6037/2008 and LPA No. 105/2010.**

Sir,

In reference to the Directorate of Elementary Education Shimla vide letter No. EDN-H(2)B(12)CWP.Ex. Pet.-Revised pay scale dated: 21-04-2025, on the subject cited above.

In the connection, you are directed to provide the following information in respect of all the schools/institutions under your block to this office immediately through this office email id:-(*ddeekangratgtbranch@gmail.com*), so that the same could be apprised to the higher authority accordingly.

1. Total number of cases of Trained Graduate Teacher (i.e. Petitioners as well as Non Petitioners) in the Elementary Education Department which are similar situated to that LPA No. 105/2010 in CWP(T) 781/2008 titled as Rakesh Chand & others V/s State of H.P.
2. What is total financial implication involved in these cases?

Name of the Block	School Name	Name of the Teacher with Designation	Petitioners/ Non Petitioners	Total Financial Implication involved	Remarks

This matter may please be treated as most urgent and time bound. In case of any delay in the said matter responsibility shell rests upon erring officer/official.

Deputy Director of Elementary Education,
Kangra at Dharamshala.

Endst. No. Even Dated Dharamshala-176215 -04-2025.
Copy to :-

1 All the Principals/Headmasters of district Kangra (HP) they are also directed to provide the information to your concerned Block Project Officer-cum-Principal as soon possible.

Deputy Director of Elementary Education,
Kangra at Dharamshala.

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP (T) No. 781/2008.

Reserved on: 23.4.2010.

Decided on:15.6. 2010

Rakesh Chand and others. …Petitioners.

Versus

State of Himachal Pradesh and others. …Respondents.

Coram:

Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] Yes.

For the petitioners : Mrs. Ranjana Parmar, Advocate.

For the respondents : Mr. R.K. Sharma, Sr. Addl. Advocate General.

Rajiv Sharma, Judge.

Material facts necessary for the adjudication of this petition are that the petitioners were appointed as Junior Basic Trained Teachers (hereinafter referred to as 'JBT teachers' for brevity sake) on contract basis in the years 1997 and 1998. A bare perusal of appointment letters issued in favour of the petitioners and the agreement entered into between them and the State reveals that the petitioners were placed in the pay scale of Rs. 1200-2100. A revision of pay scale took place

[1] Whether reporters of the local papers may be allowed to see the judgment? Yes.

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with effect from 1.1.1996 as per Annexure A-3 dated 20.1.1998. Pay scale of Rs. 1200-2100 was revised to Rs. 4550-7200. However, the petitioners were not granted the pay scale of Rs. 4550-7200 and they were paid the pay scale of Rs. 1200-2100. State Government took a decision on the basis of various judgments of the Hon'ble Supreme Court/ High Courts on 8.10.1996 (Annexure A-4) to pay full wages at the minimum of the scale including the allowance to the teachers appointed on contractual basis. This letter was issued by the Director of Education and was made applicable qua Trained Graduate Teachers/Lecturers (School Cadre).

Case of the petitioners, in a nutshell, is that they have been discharging the same duties, which are being discharged by the regularly appointed JBT teachers and are entitled to minimum pay scale of Rs. 4550-7200 from the date of their initial appointments. Precise case of the respondent-State is that petitioners have entered into agreement with the State Government and on that basis they are only entitled to pay scale of 1200-2100 and other allowances, as admissible on this pay scale. Respondent-State has denied the averments contained in the petition that the petitioners are discharging the same duties, which are being discharged by the regularly appointed JBT teachers.

Mrs. Ranjana Parmar has strenuously argued that her clients are entitled to pay scale of Rs. 4550-7200 on the

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principle of “equal pay for equal work”. She then contended that there is no difference in the educational qualification of the petitioners and the duties/functions discharged by her clients vis-a-vis regularly appointed JBT teachers.

Mr. R.K. Sharma, learned Senior Additional Advocate General has supported the decision of the State Government by arguing that once the petitioners have entered into agreement with the State Government, their pay is to be fixed in the pay scale mentioned in the agreement.

I have heard the learned counsel for the parties and have perused the pleadings carefully.

Petitioners have been appointed as JBT teachers on contract basis. It is not in dispute that petitioners fulfill the eligibility criteria prescribed for filling up the posts on regular basis. They have been working as JBT teachers. They are discharging exactly the same and similar duties, which are being discharged by the regularly appointed JBT teachers. Their qualifications and nature of duties/functions are exactly the same. However, in the matter of salary they are being given the pay scale of Rs. 1200-2100 instead of pay scale of Rs. 4550-7200, which was paid to regularly appointed JBT teachers with effect from 1.1.1996. The pay scale of Rs. 4550-7200 has been released to regularly appointed JBT teachers with effect from 1.1.1996 on the basis of notification dated 20.1.1998.

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Mrs. Ranjana Parmar has drawn the attention of the Court to letter dated 8.10.1996 (Annexure A-4). The State Government has decided that appointments of teaching staff in the schools against short term/leave vacancies shall be on contractual basis and it has been decided to pay full wages at the minimum of the scale including the allowances to the teachers appointed on contractual basis. The notification has been issued by the Director of Education. The Court is of the considered view that the State could not make any distinction in the grant of minimum pay scale to JBT teachers appointed on contractual basis once a conscious decision has been taken to grant the minimum pay scale to Trained Graduate Teachers/Lecturers (School Cadre). The decision of the State not to grant pay scale of Rs. 4550-7200 to the petitioners and similarly situate JBT teachers appointed on contractual basis is unreasonable and arbitrary.

Respondent-State is a welfare State. It could not take advantage of superior bargain power by forcing the petitioners and similarly situate teachers to agree to get pay scale of Rs. 1200-2100 though they were entitled to pay scale of Rs. 4550-7200. The agreements, which the petitioners, have entered into with the respondent-State were unconstitutional, thus violative of Articles 14 and 16 of the Constitution of India. State cannot oblivious to the “distributive justice”. The non-release of pay scale of Rs. 4550-7220 to the petitioners

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definitely has lowered their morale. State must always realize the teachers should be paid reasonable salary in order to attract best talent to impart quality education to the children that too at the lowest level.

The Apex Court in ***Central Inland Water Transport Corporation Limited and another versus Brojo Nath Ganguly and another***, (1986) 3 SCC 156 have held that concepts which are unconscionable, arbitrary and opposed to public policy are void. Their Lordships have further held that such like agreements would be violative of Articles 14, 16, 38, 39 and 49 of the Constitution of India. Their Lordships have further held that unconscionable bargain or contract is one which is irreconcilable with what is right or reasonable or the terms of which are so unfair and unreasonable that they shock the conscience of the Court. Their Lordships have held as under:

> **"71. It was submitted on behalf of the Appellants that there was nothing unconscionable about Rule 9(1). that Rule 9(i) was not a nudum pactum for it was supported by mutuality inasmuch as it conferred an equal right upon both parties to terminate the contract of employment, that the grounds which render an agreement void and unenforceable are set out in the Indian Contract Act, 1872 (Act No. IX of 1872), that unconscionability was not mentioned in the Indian Contract Act as one of the grounds which invalidates an agreement, that the power conferred by Rule 9(i) was necessary for the proper functioning of the administration of the Corporation, that in the case of the Respondents this power was exercised by the Chairman-cum-Managing Director of the Corporation,**

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and that a person holding the highest office in the Corporation was not likely to abuse the power conferred by Rule 9(i).

72. The submissions of the contesting Respondents, on the other hand, were that the parties did not stand on an equal footing and did not enjoy the same bargaining power, that the contract contained in the service rules was one imposed upon these Respondents, that the power conferred by rule 9(i) was arbitrary and uncanalized as it did not set out any guidelines for the exercise of that power and that even assuming it may not be void as a contract; in any event it offended Art. 14 as it conferred an absolute and arbitrary power upon the Corporation.

73. As the question before us is of the validity of clause (i) of Rule 9, we will refrain from expressing any opinion with respect to the validity of clause (ii) of Rule 9 or Rule 37 or 40 but will confine ourselves only to Rule 9(i).

74. The said Rules constitute a part of the contract of employment between the. Corporation and its employees to whom the said Rules apply, and they thus form a part of the contract of employment between the Corporation and each of the two contesting Respondents. The validity of Rule 9(i) would, therefore, first fall to be tested by the principles of the law of contracts.

75. Under S. 19 of the Contract Act, when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. It is not the case of either of the contesting Respondents that there was any coercion brought to bear upon him or that any fraud or misrepresentation had been practised upon him. Under section 19A, when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused and the Court may set aside any such contract either absolutely or if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just. Sub-sec. (1) of S. 16 defines "Undue influence" as follows :

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"16. 'Undue influence' defined. –

(1) A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other."

The material provisions of sub-see. (2) of S. 16 are as follows :

"(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another –

(a) where he holds a real or apparent authority over the other .....We need not trouble ourselves with the other sections of the Contract Act except Ss. 23 and 24. Section 23 states that the consideration or object of an agreement is lawful unless inter alia the Court regards it as opposed to public policy. This section further provides that every agreement of which the object or consideration is unlawful is void. Under S. 24, if any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object is unlawful, the agreement is void. The agreement is, however, not always void in its entirety for it is well settled that if several distinct promises are made for one and the same lawful consideration, and one or more of them be such as the law will not enforce, that will not of itself prevent the rest from being enforceable. The general rule was stated by Willes, J., in Pickering v. Ilfracombe Ry. Co. (1868) 3 CP 235 (at page 250) as follows:

"The general rule is that, where you cannot sever the illegal from the legal part of a covenant, the contract is altogether void; but where you can sever them, whether the illegality be created by statute or by the common law, you may reject the bad part and retain the good".

76. Under which head would an unconscionable bargain fall? If it falls under the head of undue influence, it would be voidable but if it falls under the head of being opposed to public policy, it would be void. No case of the type before us appears to have fallen for decision under the law of contracts before any court in India nor has any case on

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all fours of a Court in any other country been pointed out to us. The word "unconscionable" is defined in the Shorter Oxford English Dictionary, Third Edition, Volume II, page 2288, when used with reference to actions. etc. as "showing no regard for conscience; irreconcilable with what is right or reasonable". An unconscionable bargain would, therefore, be one which is irreconcilable with what is right or reasonable.

77. Although certain types of contracts were illegal or void, as the case may be, at Common Law, for instance, those contrary to public policy or to commit a legal wrong such as a crime or a tort, the general rule was of freedom of contract. This rule was given full play in the nineteenth century on the ground that the parties were the best judges of their own interests, and if they freely and voluntarily entered into a contract, the only function of the Court was to enforce it. It was considered immaterial that one party was economically in a stronger bargaining position than the other; and if such a party introduced qualifications and exceptions to his liability in clauses which are today known as "exemption clauses" and the other party accepted them, then full effect would be given to what the parties agreed. Equity, however, interfered in many cases of harsh or unconscionable bargains, such as, in the law relating to penalties, forfeitures and mortgages. It also interfered to set aside harsh or unconscionable contracts for salvage services rendered to a vessel in distress, or unconscionable contracts with expectant heirs in which a person, usually a money-lender. gave ready cash to the heir in return for the property which he expects to inherit and thus to get such property at a gross undervalue. It also interfered with harsh or unconscionable contracts entered into with poor and ignorant persons who had not received independent advice (See Chitty on Contracts, Twenty-fifth Edition, Volume I, paragraphs 4 and 516).

78. Legislation has also interfered in many cases to prevent one party to a contract from taking undue or unfair advantage of the other. Instances of this type of legislation are usury laws, debt relief laws and laws regulating the hours of work and conditions of service of workmen and their unfair

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discharge from service, and control orders directing a party to sell a particular essential commodity to another.

79. In this connection. it is useful to note what Chitty has to say about the old ideas of freedom of contract in modern times. The relevant passages are to be found in Chitty on Contracts, Twenty-fifth Edition, Volume I, in paragraph 4, and are as follows :

"These ideas have to a large extent lost their appeal today. 'Freedom of contract,' it has been said, 'is a reasonable social ideal only to the extent that equality of bargaining power between contracting parties can be assumed, and no injury is done to the economic interests of the community at large.' Freedom of contract is of little value when one party has no alternative between accepting a set of terms proposed by the other or doing without the goods or services offered. Many contracts entered into by public utility undertakings and others take the form of a set of terms fixed in advance by one party and not open to discussion by the, other. These are called contracts adhesion' by French lawyers. Traders frequently contract, not on individually negotiated terms, but on those contained in a standard form of contract settled by a trade association. And the terms of an employee's contract of employment may be determined by agreement between his trade union and his employer, or by a statutory scheme of employment. Such transactions are nevertheless contracts notwithstanding that freedom of contract is to a great extent lacking.

Where freedom of contract is absent, the disadvantages to consumers or members of the public have to some extent been offset by administrative procedures for consultation, and by legislation. Many statutes introduce terms into contracts which the parties are forbidden to exclude, or declare that certain provisions in a contract shall be void. And the Courts have developed a number of devices for refusing to implement exemption clauses imposed by the economically stronger party on the weaker, although they have not recognised in themselves any general power (except by statute) to declare broadly that an exemption clause will not be enforced unless it is reasonable. Again,

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more recently, certain of the judges appear to have recognised the possibility of relief from contractual obligations on the ground of 'inequality of bargaining power."

What the French call "contracts dadhesion", the American call "adhesion contracts" or "contracts of adhesion". An "adhesion contract" is defined in Black's Law Dictionary, Fifth Edition, at page 38 as follows:

'Adhesion contract'. Standardized contract form offered to consumers of goods and services on essentially 'take it or leave it' basis without affording consumer realistic opportunity to bargain and under such conditions that consumer cannot obtain desired product' or services except by acquiescing in form contract. Distinctive feature of adhesion contract, is that weaker party has no realistic choice as to its terms. Not every such contract is unconscionable."

81. The position under the American Law is stated in "Reinstatement of the Law Second" as adopted and promulgated by the American Law Institute, Volume II which deals with the law of contracts, in section 208 at page 107, as follows:

"§ 208. Unconscionable Contract or Term

If a contract or term thereof is unconscionable at the time the contract is made a Court may refuse to enforce the contract, or may enforce the remainder of the contract without the unconscionable term, or may so limit the application of any unconscionable term as to avoid any unconscionable result."

In the-Comments given under that section it is stated at page 107:

"Like the obligation of good faith and fair dealing (§205), the policy against unconscionable contracts or terms applies to a wide variety of types of conduct. The determination that a contract or term is or is not unconscionable is made in the light of its setting, purpose and effect. Relevant factors include weaknesses in the contracting process like those involved in more specific rules as to contractual capacity, fraud and other invalidating causes; the policy also overlaps with rules which render

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particular bargains or terms unenforceable on grounds of public policy. Policing against unconscionable contracts or terms has sometimes been accomplished by adverse construction of language, by manipulation of the rules of offer and acceptance or by determinations that the clause is contrary to public policy or to the dominant purpose of the contract'. Uniform Commercial Code § 2-302 Comment 1 ..... A bargain is not unconscionable merely because the parties to it are unequal in bargaining position, nor even because the inequality results in an allocation of risks to the weaker party. But gross inequality of bargaining power, together with terms unreasonably favourable to the stronger party, may confirm indications that the transaction involved elements of deception or compulsion, or may show that the weaker party had no meaningful choice, no real alternative, or did not in fact assent or appear to assent to the unfair terms." (Emphasis supplied)

There is a statute in the United States called the Universal Commercial Code which is applicable to contracts relating to sales of goods. Though this statute is inapplicable to contracts not involving sales of goods, it has proved very influential in, what are called in the United States, "non-sales" cases. It has many times been used either by analogy or because it was felt to embody a general accepted social attitude of fairness going beyond its statutory application to sales of goods. In the Reporter's Note to the said section 208, it is stated at page 112:

"It is to be emphasized that a contract of adhesion is not unconscionable per se, and that all unconscionable contracts, are not contracts of adhesion. Nonetheless, the more standardized the agreement and the less a party may bargain meaningfully, the more susceptible the contract or a term will be to a claim of unconscionability." (Emphasis supplied)

The position has been thus summed up by John R. Peden in "The Law of Unjust Contracts" published by Butterworths in 1982, at pages 28-29:

".....Unconscionability represents the end of a cycle commencing with the Aristotelian concept of justice and the

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Roman law laesio enormis, which in turn formed the basis for the medieval church's concept of a just price and condemnation of usury. These philosophies permeated the exercise, during the seventeenth and eighteenth centuries, of the Chancery Court's discretionary powers under which it upset all kinds of unfair transactions. Subsequently the movement towards economic individualism in the nineteenth century hardened the exercise of these powers by emphasizing the freedom of the parties to make their own contract. While the principle of pacta sunt servanda held dominance, the consensual theory still recognized exceptions where one party was overborne by a fiduciary, or entered a contract under duress or as the result of fraud. However, these exceptions were limited and had to be strictly proved.

It is suggested that the judicial and legislative trend during the last 30 years in both civil and common law jurisdictions has almost brought the wheel full circle. Both courts and Parliaments have provided greater protection for weaker parties from harsh contracts. In several jurisdictions this included a general power to grant relief from unconscionable contracts, thereby providing a launching point from which the courts have the opportunity to develop a modern doctrine of unconscionability. American decisions on article 2.302 of the UCC have already gone some distance into this new arena.....

The expression "laesio enormis" used in the above passage refers to "laesio ultra dimidium vel enormis" which in Roman law meant the injury sustained by one of the parties to an onerous contract when he had been overreached by the other to the extent of more than one-half of the value of the subject matter, as for example, when a vendor had not received half the value of property sold, or the purchaser had paid more than double value. The maxim "Pacta sunt servanda" referred to in the above passage means "contracts are to be kept".

81. It would appear from certain recent English cases that the Courts in that country have also begun to recognize the possibility of an unconscionable bargain which could be

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brought about by economic duress even between parties who may not in economic terms be situate differently (See, for instance, Occidental Worldwide Investment Corpn. V. Skibs A/S Avanti (1976), 1 Lloyd's Rep. 293, North Ocean Shipping Co. Lid. v. Hyundai Construction Co. Ltd. (1979) QB 705, Pao On v. Lau Yin Long (1980) AC 614 and Universe Tankships of Monrovia v. International Transport Workers Federation (1981) ICR 129, reversed in (1982) 2 WLR 803, and the commentary on these cases in Chitty on Contracts, Twenty-fifth Edition, Volume 1, paragraph 486).

82. Another jurisprudential concept of comparatively modern origin which has affected the law of contracts is the theory of distributive justice". According to this doctrine, distributive fairness and justice" in the possession of wealth and property can be achieved not only by taxation but also by regulatory control of private and contractual transactions. even though this might involve some sacrifice of individual liberty. In Lingappa Pochanna Appelwar v. State of Maharashtra, (1985) 1 SCC 479 : (AIR 1985 SC 389), this Court, while upholding the constitutionality of the Maharashtra Restoration of Lands to Scheduled Tribes Act 1974, said (at page 493) (of SCC) : (at p. 398 of AIR) :

"The present legislation is a typical illustration of the concept of distributive justice, as modern jurisprudents know it. Legislators, Judges and administrators are now familiar with the concept of distributive justice. Our Constitution permits and even directs the State to administer what may be termed distributive justice'. The concept of distributive justice in the sphere of law-making connotes, inter alia, the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. Law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of society based upon the principle: 'From each according to his capacity, to each according to his needs'. Distributive justice comprehends more than achieving lessening of inequalities by differential taxation, giving debt relief or distribution of property owned by one to many who have none by imposing ceiling on holdings, both agricultural

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and urban, or by direct regulation of contractual transactions by forbidding certain transactions and, perhaps, by requiring others. It also means that those who have been deprived of their properties by unconscionable bargains should be restored their property. All such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society or there may be legislative control of unfair agreements."

(Emphasis supplied)

When our Constitution states that it is being enacted in order to give to all the citizens of India "JUSTICE social, economic and political", when clause (1) of Art. 38 of the Constitution directs the State to strive to promote the welfare of the people by securing and protecting as effectively as it may be social order in which social, eoconomic and political justice shall infom all the institutions of the national life, when clause (2) of Art. 38 directs the State, in particular, to minimize the inequalities in income, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations, and when Art. 39 directs the State that it shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment and that there should be equal pay for equal work for both men and women, it is the doctrine of distributive justice which is speaking through these words of the Constitution.

83. Yet another theory which has made its emergence in recent years in the sphere of the law of contracts is the test of reasonableness or fairness of a clause in a contract where there is inequality of bargaining power. Lord Denning M.R., appears to have been the propounder, and perhaps the originator - at least in England, of this theory. In Gillespie Brothers & Co. Ltd. v. Roy Bowles Transport Ltd., (1973) 1 QB 400. Where the question was whether an indemnity clause in a contract, on its true construction, relieved the indemnifier

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from liability arising to the indemnified from his own negligence, Lord Denning said (at pages 415-6):

"The time may come when this process of construing the contract can be pursued no further. The words are too clear to permit of it. Are the courts then powerless? Are they to permit the party to enforce his unreasonable clause, even when it is so unreasonable, or applied so unreasonably, as to unconscionable? When it gets to this point, I would say, as I said many years ago:

"there is the vigilance of the common law which, while allowing freedom of contract, watches to see that it is not abused' : John Lee & Son (Grantham) Ltd. v. Railway Executive (1949) 2 All ER 581, 584. It will not allow a party to exempt himself from his liability at common law when it would be quite unconscionable for him to do so." (Emphasis supplied)

In the above case the Court of Appeal negatived the defence of the indemnifier that the indemnity clause did not cover the negligence of the indemnified. It was in Lloyds Bank Ltd. v. Bundy, (1974) 3 All ER 757 that Lord Denning first clearly enunciated his theory of "inequality of bargaining power". He began his discussion on this part of the case by stating (at page 763):

"There are cases in our books in which the courts will set aside a contract, or a transfer of property, when the parties have not met on equal terms, when the one is so strong in bargaining power and the other so weak that, as a matter of common fairness, it is not right that the strong should be allowed to push the weak to the wall. Hitherto those exceptional cases have been treated each as a separate category in itself. But I think the time has come when we should seek to find a principle to unite them. I put on one side contracts or transactions which are voidable for fraud or misrepresentation or mistake. All those are governed by settled principles. I go only to those where there has been inequality of bargaining power, such as to merit the intervention of the Court." (Emphasis supplied)

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He then referred to various categories of cases and ultimately deduced therefrom a general principle in these words (at page 765) :

"Gathering all together, I would suggest that through all these instances there runs a single thread. They rest on 'inequality of bargaining power'. By virtue of it, the English law gives relief to one who, without independent advice, enters into a contract on terms which are very unfair or transfers property for a consideration which is grossly inadequate, when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity, coupled with undue influences or pressures brought to bear on him by or for the benefit of. the other. When I use the word 'undue' I do not mean to suggest that the principle depends on proof of any wrongdoing. The one who stipulates for an unfair advantage may be moved solely by his own self-interest, unconscious of the distress he is bringing to the other. I have also avoided any reference to the will of the one being 'dominated' or .overcome' by the other. One who is in extreme need may knowingly consent to a most improvident bargain, solely to relieve the straits in which he finds himself. Again, I do not mean to suggest that every transaction is saved by independent advice: But the absence of it may be fatal. With these explanations, I hope this principle will be found to reconcile the cases." (Emphasis supplied)

84. Though the House of Lords does not yet appear to have unanimously accepted this theory, the observations of Lord Diplock in A. Schroeder Music Publishing Co. Ltd. v. Macaulay (Formerly Instone) (1974) 1 WLR 1308 are a clear pointer towards this direction. In that case a song writer had entered into an agreement with a music publisher in the standard form whereby the publishers engaged the song writer's exclusive services during the term of the agreement, which was five years. Under the said agreement, the song writer assigned to the publisher the full copyright for the whole world in his musical compositions during the said term. By another term of the said agreement, if the total royalties during the term of the agreement exceeded £5,000

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the agreement was to stand automatically extended by a further period of five years. Under the said agreement, the publisher could determine the agreement at any time by one month's written notice but no corresponding right was given to the song writer. Further, while the publisher had the right to assign the agreement, the song writer agreed not to assign ,his rights without the publisher's prior written consent. The song writer brought an action claiming, inter alia, a declaration that the agreement was contrary to public policy and Void. Plowman, J., who heard the action granted the declaration which was sought and the Court of Appeal affirmed his judgment. An appeal filed by the publishers against the judgment of the Court of Appeal was dismissed by the House of Lords. The Law Lords held that the said agreement was void as it was in restraint of trade and thus contrary to public policy. In his speech Lord Diplock, however, outlined the theory of reasonableness or fairness of a bargain. The following observations of his on this part of the case require to be reproduced in extenso (at pages 1315-16):

"My Lords, the contract under consideration in this appeal is one whereby the respondent accepted restrictions upon the way in which he would exploit his earning power as a song writer for the next ten years. Because this can be classified as a contract in restraint of trade the restrictions that the respondent accepted fell within one of those limited categories of contractual promises in respect of which the courts still retain the power to relieve the promisor of his legal duty to fulfil them. In order to determine whether this case is one in which that power ought to be exercised, what your Lordships have in fact been doing has been to assess the relative bargaining power of the publisher and the song writer at the time the contract was made and to decide whether the publisher had used his superior bargaining power to exact from the song writer promises that were unfairly onerous to him. Your Lordships have not been concerned to inquire whether the public have in fact been deprived of the fruit of the song writer's talents by reason of the restrictions, nor to assess the likelihood that they would

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be so deprived in the future if the contract were permitted to run its full course.

It is, in my view, salutary to acknowledge that in refusing to enforce provisions of a contract whereby one party agrees for the benefit of the other party to exploit or to refrain from exploiting his own earning power, the public policy which the Court is implementing is not some 19th century economic theory about the benefit to the general public of freedom of trade, but the protection of those whose bargaining power is weak against being forced by those whose bargaining power is stronger to enter into bargains that are unconscionable. Under the influence of Bentham and of laissez faire the Courts in the 19th century abandoned the practice of applying the public policy against unconscionable bargains to contracts generally, as they had formerly done to any contract considered to be usurious; but the policy survived in its application to penalty clauses and to relief against forfeiture and also to the special category of contracts in restraint of trade. If one looks at the reasoning of 19th century judges in cases about contracts in restraint of trade one finds lip service paid to current economic theories, but if one looks at what they said in the light of what they did, one finds that they struck down a bargain if they thought it was unconscionable as between the parties to it and upheld, it if they thought that it was not.

So I would hold that the question to be answered as respects a contract in restraint of trade of the kind with which this appeal is concerned is: "Was the bargain fair?" The test of fairness is, no doubt, whether the restrictions are both reasonably necessary for the _protection of the legitimate interests of the promisee and commensurate with the benefits secured to the promisor under the contract. For the purpose_of this test all the provisions of the contract must be taken into consideration." (Emphasis supplied)

Lord Diplock then proceeded to point out that there are two kinds of standard forms of contracts. The first is of contracts which contain standard clauses which "have been settled over the years by negotiation by representatives of the commercial interests involved and have been widely

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adopted because experience has shown that they facilitate the conduct of trade". He then proceeded to state, " If fairness or reasonableness were relevant to their enforceability the fact that they are widely used by parties whose bargaining power is fairly matched would raise a strong presumption that their terms are fair and reasonable". Referring to the other kind of standard form of contract Lord Diplock said (at page 1316)

"The same presumption, however, does not apply to the other kind of standard form of contract. This is of comparatively modern origin. It is the result of the concentration of particular kinds of business in relatively few hands. The ticket cases in the 19th century provide what are probably the first examples. The terms of this kind of standard form of contract have not been the subject of negotiation between the parties to it, or approved by any organisation representing the interests of the weaker party. They have been dictated by that party whose bargaining power, either exercised alone or in conjunction with others providing similar goods or services, enables him to say : 'If you want these goods or services at all, these are the only terms on which they are obtainable. Take it or leave it'.

To be in a position to adopt this attitude towards a party desirous of entering into a contract to obtain goods or services provides a classic instance of superior bargaining power. (Emphasis supplied)

85. The observations of Lord Denning, M. R., in Levison v. Patent Steam Carpet Co. Ltd. (1978) 1 QB 69, are also useful and require to be quoted. These observations are as follows (at page 79) :

"In such circumstances as here the Law Commission in 1975 recommended that a term which exempts the stronger party from his ordinary common law liability should not be given effect except when it is reasonable: see The Law Commission and the Scottish Law Commission Report, Exemption Clauses, Second Report (1975) (August 5, 1975), Law Com. No. 69 (H. C. 605), pp. 62,174; and there is a bill now before Parliament which gives effect to the test of reasonableness. This is a gratifying piece of law reform: but I

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do not think we need wait for that bill to be passed into law. You never know what may happen to a bill. Meanwhile the common law has its own principles ready to hand. In Gillespie Bros. & Co. Ltd. v. Roy Bowles Transport Ltd. (197 3) 1 QB 400, 416, I suggested that an exemption or limitation clause should not be given effect if it was unreasonable, or if it would be unreasonable to apply it in the circumstances of the case. I see no reason why this should not be applied today, at any rate in contracts in standard forms where there is inequality of bargaining power."

86. The Bill referred to by Lord Denning in the above passage, when enacted, became the Unfair Contract Terms Act, 1977. This statute does not apply to all contracts but only to certain classes of them. It also does not apply to contracts entered into before the date on which it came into force, namely, February 1, 1978; but subject to this it applies to liability for any loss or damage which is suffered on or after that date. It strikes at clauses excluding or restricting liability in certain classes of contracts and torts and introduces in respect of clauses of this type the test of reasonableness and prescribes the guidelines for determining their reasonableness. The detailed provisions of this statute do not concern us but they are worth a study.

87. In Photo Production Ltd. v. Securicor Transport Ltd., (1980) AC 827, a case-before the Unfair Contract Terms Act, 1977, was enacted, the House of Lords upheld an exemption clause in a contract on the defendants' printed form containing standard conditions. The decision appears to proceed on the ground that the parties were businessmen and did not possess unequal bargaining power. The House of Lords did not in that case reject the test of reasonableness or fairness of a clause in a contract where the parties are not equal in bargaining position. On the contrary, the speeches of Lord. Wilberforce, Lord Diplock and Lord Scarman would seem to show that the House of Lords in a fit case would accept that test. Lord Wilberforce in his speech, after referring to the Unfair Contract Terms Act, 1977, said (at page 843):

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"This Act applies to consumer contracts and those based on standard terms and enables exception clauses to be applied with regard to what is just and reasonable. It is significant that Parliament refrained from legislating over the whole field of contract After this Act, in commercial matters generally, when the parties are not of unequal bargaining power, and when risks are normally borne by insurance, not only is the case for judicial intervention undemonstrated, but there is everything to be said, and this seems to have been Parliament's intention, for leaving the parties free to apportion the risks as they think fit and for respecting their decisions." (Emphasis supplied)

Lord Diplock said (at pages 850-51) :

"Since the obligations, implied by law in a commercial contract are those which, by judicial consensus over the years or by Parliament in passing a statute, have been regarded as obligations which a reasonable businessman would realise that he was accepting when he entered into a contract of a particular kind, the court's view of the reasonableness of any departure from the implied obligations which would be involved in construing the express words of an exclusion clause in one sense that they are capable of bearing rather than another, is a relevant consideration in deciding what meaning the words, were intended by the parties to bear." (Emphasis supplied)

Lord Scarman, while agreeing with Lord Wilberforce, described (at page 853) the action out of which the appeal before the House had arisen as "a commercial dispute between parties well able to look after themselves" and then added, "In such a situation what the parties agreed (expressly or impliedly) is what matters; and the duty of the courts is to construe their contract according to its tenor."

88. As seen above, apart from judicial decisions, the United States and the United Kingdom have statutorily recognized, at least in certain areas of the law of contracts, that there can be unreasonableness (or lack of fairness, if one prefers that phrase) in a contract or a clause in a contract where there is inequality of bargaining power between the parties although arising out of circumstances not within their

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control or as a result of situations not of their creation. Other legal systems also permit judicial review of a contractual transaction entered into in similar circumstances. For example, section 138(2) of the German Civil Code provides that a transaction is void "when a person" exploits "the distressed situation, inexperience, lack of judgmental ability, or grave weakness of will of another to obtain the grant or promise of pecuniary advantages..... which are obviously disproportionate to the performance given in return." The position according to the French law is very much the same.

89. Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of nineteenth-century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample under foot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Art. 14. This principle is that, the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the

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great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the. contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its, own facts and circumstances.

90. It is not as if our civil courts have no power under the existing law. Under section 31(1) of the Specific Relief Act, 1963 (Act No. 47 of 1963), any person against whom an instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable, and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

91. Is a contract of the type mentioned above to be adjudged voidable or void? If it was induced by undue influence, then under section 19A of the Indian Contract Act, it would be voidable. It is, however, rarely that contracts of the types to which the principle formulated by us above applies are induced by undue influence as defined by S. 16(1)

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of the Contract Act, even though at times they are between parties one of whom holds a real or apparent authority over the other. In the vast majority of cases, however, such contracts are entered into by the weaker party under pressure of circumstances, generally economic, which results in inequality of bargaining power. Such contracts will not fall within the four corners of the definition of "undue influence" given in section 16(1). Further, the majority of such contracts are in a standard or prescribed form or consist of a set of rules. They are not contracts between individuals containing terms meant for those individuals alone. Contracts in prescribed or standard forms or which embody a set of rules as part of the contract are entered into by the party with superior bargaining power with a large number of persons who have far less bargaining power or no bargaining power at all. Such contracts which affect a large number of persons or a group or groups of persons, if they are unconscionable, unfair and unreasonable, are injurious to the public interest. To say that such a contract is only voidable would be to compel each person with whom the party with superior bargaining power had contracted to go to court to have the contract adjudged voidable. This would only result in multiplicity of litigation which no court should encourage and would also not be in the public Interest. Such a contract or such a clause in a contract ought, therefore, to be adjudged void. While the law of contracts in England is mostly judge-made, the law of contracts in India is enacted in a statute, namely, the Indian Contract Act, 1872. In order that such a contract should be void, it must fall under one of the relevant sections of the Indian Contract Act. The only relevant provision in the Indian Contract Act which can apply is S. 23 when it states that "The consideration or object of an agreement is lawful, unless ... the court regards it as .....opposed to public policy."

92. The Contract Act does not define the expression "public policy" or "opposed to public policy". From the very nature of things, the expressions "public policy", "opposed to public policy", or "contrary to public policy" are incapable of precise definition. Public policy, however, is not the policy

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of a particular government. It connotes some matter which concerns the public good and the public interest. The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time. As new concepts take the place of old, transactions which, were once considered against public policy are now being upheld by the courts and similarly where there has been a well-recognized head of public, policy, -the courts have not shirked from extending it to new transactions and changed circumstances and have at times not even flinched from Inventing a new head of public policy. There are two schools of thought - "the narrow view" school and "the broad view" school. According to the former, courts cannot create new heads of public policy whereas the latter countenances judicial law-making in this area. The adherents of "the narrow view" school would not invalidate a contract on the ground of public policy unless that particular ground had been well established by authorities. Hardly ever has the voice of the timorous spoken more clearly and loudly than in these words of Lord Davey in Janson v. Driefontein Consolidated Mines, Limited (1902) AC 484, 500, "Public policy is always an unsafe and treacherous ground for legal decision." That was in the year 1902. Seventy-eight years" earlier, Burrough, J., in Richardson v. Mellish (1824) 2 Bing 229, 252 SC 130 ER 294, 303, and (1824-34) All ER Reprint 258, 266. described public policy as "a very unruly horse, and when once you get astride it you never know where it will carry you." The Master of the Rolls, Lord Denning, however, was not a man to shy away from unmanageable horses and in words which' conjure up before our eyes the picture of the young Alexander the Great Taming Bucephalus, he said in Enderby Town Football Club Ltd. v. Football Association Ltd. (1971) Ch 591, 606, "With a good man in the saddle, the unruly horse can be kept in control. It can jump over obstacles." Had the timorous always held "the field, not only the doctrine of public policy but even the Common Law or the principles of Equity would never have evolved. Sir William Holdsworth in his "History of English Law", Volume III, page 55, has said:

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"In fact, a body of law like the common law, which has grown up gradually with the growth of the nation, necessarily acquires some fixed principles, and if it is to maintain these principles it must be able, on the ground of public policy or some other like ground, to suppress practices which, under ever new disguises, seek to weaken or negative them."

It is thus clear that the principles. governing public policy must be and are capable, on proper occasion, of expansion or modification. Practices which were considered perfectly normal at one time have today become obnoxious and oppressive to public conscience. If there is no head of public policy which covers a case, then the court must in consonance with public conscience and in keeping with public good and public interest declare such practice to be opposed to public policy. Above all, in deciding any case which may not be covered by authority our courts have before them the beacon light of the Preamble to the Constitution. Lacking precedent, the court can always be guided by that light and the principles underlying the Fundamental Rights and the Directive Principles enshrined in our Constitution.

96. The said Rules as also the earlier rules of 1970 were accepted by the contesting Respondents without demur. Here again they had no real choice before them. They had risen higher in the hierarchy of the Corporation. If they had refused to accept the said Rules it would have resulted in termination of their services' and the consequent anxiety, harassment and uncertainty of finding alternative employment.

97. 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:

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"...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. 98. 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

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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 0. 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-

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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 instant case the petitioners were unemployed at the time when they were recruited as JBT teachers on contractual basis. They were possessing minimum educational qualifications prescribed for filling up the post of JBT teacher on regular basis. They were appointed on contract basis, however, they have been made to sign the agreement whereby their pay has been fixed in the pay scale of Rs. 1200-2100 though the same stood revised with effect from 1.1.1996 to Rs. 4550-7200. Petitioners being unemployed youth were in inferior bargaining position vis-à-vis the State Government. State Government has taken advantage of their helplessness by making them to agree to unconscionable and arbitrary terms and conditions, which are opposed to public policy. Petitioners had no alternative but to sign the agreement. This agreement besides being opposed to public policy is also unconstitutional. The agreement whereby the petitioners' pay was restricted only in the pay scale of Rs. 1200-2100 is also violative of Articles 14, 16, 38, 39 and 49 of the Constitution of India.

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In **Vijay Kumar and others versus State of Punjab and others,** 1995 Supp (4) SCC 513, their Lordships of the Hon'ble Supreme Court have held that part time lecturers not gainfully employed elsewhere in their spare time, who were working for more hours every day as compared to the regularly appointed lecturers, their nature and quality of work being the same, were held entitled to the minimum of the pay scale prescribed for the post of regular lecturers during their employment as part-time lecturers. Their Lordships have held as under:

> **"5. The respondents in response to the notice have stated in the counter-affidavit that the appellants as part-time lecturers are bound by the conditions of their appointment and are not entitled to claim anything in excess thereof. It is also contended by the respondents that the part-time lecturers were free to be gainfully employed elsewhere in their spare time which advantage in fact these appellants had taken. On this basis, the respondents contended that the appellants were not entitled even to the minimum of the pay scale of the post of lecturer since the principle of equal pay for equal work did not apply on the facts of this case. Accordingly, we gave opportunity to the respondents to substantiate their assertion even before us and made an order on 5-8-1992 as follows :-**
>
> **"Learned counsel for the respondents prays for grant of two weeks' time to file the material documents to support the respondents' contention that the petitioners were mere part time employees who are not entitled even to the minimum of the pay scale of the post of regular lecturers because during the remaining time they were gainfully employed elsewhere and also the nature and amount of work done by them is not equal to that of the regular lecturers."**

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Thereafter in the affidavit dated 20-8-1992 filed on behalf of the respondents apart from reiterating generally the earlier assertion, it has been clearly stated as under:

"The part time lecturers are known to be doing some jobs or the other in addition to their job as a part-time lecturers. However, the respondent/State is not in a position to give any documentary evidence to establish this fact against the petitioners."

It may be stated that in the rejoinder filed by the appellants this assertion of the State has been emphatically denied and it has been clearly stated that none of the appellants was employed at any other place and, therefore, there was no other source of earning for the appellants in addition to the remuneration paid to them for working as part-time lecturers. The appellants also expressly stated that they had been working for more hours every day as compared to the regularly appointed lecturers. In other words, the appellants claim to have been working more and not merely equal to the regular lecturers, their nature and quality of work being the same.

6. On these facts, it can hardly be disputed that on the principle of equal pay for equal work, the respondent-State has to pay to the appellants the minimum of the pay scale prescribed for the post, the duties of which they are discharging during the period their employment as part time lecturers subsists. The notice being limited to this extent in the present case, the appellants claim for absorption and regularisation on the post is not a matter for consideration herein and this decision would not create or confer on them any right for regularisation on this basis, if no such right is available to them otherwise."

The Apex Court in ***Nar Singh Pal versus Union of India and others***, (2000) 3 SCC 588 have held that there cannot be any waiver or estoppel against the fundamental rights. Their Lordships have held as under:

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"13. The Tribunal as also the High Court, both appear to have been moved by the fact that the appellant had encashed the cheque through which retrenchement compensation was paid to him. They intended to say that once retrenchement compensation was accepted by the appellant, the chapter stands closed and it is no longer open to the appellant to challenge his retrenchement. Thus, we are constrained to observe, was wholly erroneous and was not the correct approach. The appellant was a casual labour who had attained the 'temporary' status after having put in ten years' of service. Like any other employee, he had to sustain himself, or may be, his family members on the wages he got. On the termination of his services, there was no hope left for payment of salary in future. The retrenchement compensation paid to him, which was only a meagre amount of Rs. 6,350/-. was utilised by him to sustain himself. This does not mean that he had surrendered all his constitutional rights in favour of the respondents. Fundamental Rights under the Constitution cannot be bartered away. They cannot be compromised nor can there be any esstoppel against the exercise of Fundamntal Rights available under the Constitution. As pointed out earlier, the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and his constitutional rights. Such an order cannot be sustained."

Petitioners have not been treated in a just and fair manner by the respondent-State. They have been discriminated against vis-à-vis the Trained Graduate Teachers/Lecturers (School Cadre). The decision which has been taken qua the Trained Graduate Teachers/Lecturers (School Cadre), vide Annexure A-4, should have been made applicable to the petitioners as well to redress their grievance.

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The matter is required to be considered from another angle. Mrs. Ranjana Parmar has argued that the petitioners are entitled to pay scale of Rs. 4550-7200 and revised from time to time on the principle of “equal pay for equal work”.

Now, the Court will advert to the contention of Mrs. Ranjana Parmar that her clients are entitled to pay scale of Rs. 4550-7200 on the principle of “equal pay for equal work”. In order to determine parity in the pay scales, the mode of recruitment, qualification, nature of work, the value of judgment, responsibilities, functional needs and duties are required to be considered. In the instant case, the petitioners are possessing the same qualifications, which are being possessed by the regularly appointed teachers. Their nature of work is the same. Their responsibilities and fundamental duties are also same. There is functional parity in contractual appointees vis-à-vis regularly appointed teachers. There is wholesome identity between the duties discharged by the petitioners and regularly appointed teachers except the mode of requirement.

Their Lordships of the Hon’ble Supreme Court in ***State of Kerala versus B. Renjith Kumar and others***, (2008) 12 SCC 219 have held that the doctrine of “equal pay for equal work” has assumed the status of fundamental rights and the equal pay cannot be denied only on the basis of difference in

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the source of recruitment. Their Lordships have held as under:

> **"18. In the present case, the respondents' claim before the High Court was confined to equal scale of pay to that of the District Judges. This was based on the fact that the respondents are discharging similar duties and functions in the administration of justice and their scale of pay was equal to that of District Judges till revision of pay scales of the Judicial Officers in the year 1998. The Industrial Tribunals are indisputably judicial tribunals manned by legal professionals who are eligible to be appointed as District Judges or Judges of the High Courts. The Presiding Officers are exercising judicial powers and duties under the ID Act, 1947 and their decisions are subject matter of challenge before the High Court by way of writ petition. The only difference is their source of recruitment.**
>
> **19. Looking to the nature of duties and functions of these respondents, we are of the opinion that there is no reason to treat them differently. Once these persons are already working for more than three decades discharging the same functions and duties, we see no reason why the same benefit should not be given to the respondents and other similarly situated Presiding Officers of the Tribunal who are the applicants before us in IA No. 2/2004.**
>
> **21. The principle of "equal pay for equal work" has been considered, explained and applied in a catena of decisions of this Court. The doctrine of "equal pay for equal work" was originally propounded as part of the Directive Principles of State Policy in Article 39(d) of the Constitution. Thus, having regard to the Constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, in service jurisprudence, the doctrine of "equal pay for equal work" has assumed the status of fundamental right. (see Randhir Singh v. Union of India (1982) 1 SCC 618 and D.S. Nakara v. Union of India (1983) 1 SCC 305]."**

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It is also true that it is for the employer to decide what pay is to be paid to a particular employee. However, it is also equally settled that if pay fixation is unreasonable, unjust and in prejudice to a section of employees and the decision has been taken in ignorance of material facts, Courts can interferer. Their Lordships of the Hon'ble Supreme Court in ***Haryana State Minor Irrigation Tube wells Corporation and others Versus G.S. Uppal and others***, (2008) 7 SCC 375 have held as under:

> **"16. There is no dispute nor can there be any to the principle as settled in the above-cited decisions of this Court that fixation of pay and determination of parity in duties is the function of the Executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well-settled that the courts should interfere with the administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors. [see K.T. Veerappa & Ors. v. State of Karnataka & Ors. (2006) 9 SCC 406]."**

Accordingly, in view of the observations made hereinabove and the definitive law laid down by their Lordships of the Hon'ble Supreme Court, the petition is allowed. Respondents are directed to release the pay scale of Rs. 4550-7200 to the petitioners from their initial date of appointment as JBT teachers on contract basis. Needful be

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done within a period of ten weeks. The amount due to the petitioners shall carry interest @ 9% per annum. No costs.

(Rajiv Sharma),
Judge

15.6.2010
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