appropriate steps as per our observations made hereinabove.

(7) A copy of this judgment shall be sent to the Chief Secretary of Government of Himachal Pradesh and the Registrar of the High Court of Himachal Pradesh for their information and necessary action, if so desired ;

(47) The petitioner who has claimed to be public spirited person and has invoked the jurisdiction of this Court in public interest for removal of health hazard, life rescue of the area, is held entitled to costs which are assessed at Rs. 10,500 to be share by private respondents at the rate of Rs. 500 each. We have been persuaded to award such costs in view of the fact that the petitioner has been directed not to sell his land admittedly located in the identified zone, to the private respondents for any purpose or for the purpose of installing stone crushers.

J.S.T.

Before Hon'ble G. S. Singhvi & T.H.B. Chalapathi, JJ.

RAJNI BALA,—*Petitioner.*

versus

STATE OF HARYANA & OTHERS,—*Respondents.*

C.W.P. No. 10089 *of* 1995

25th July, 1995

Constitution of India, 1950—*Arts.* 14 & 16—Ad hoc *appointment*—*Termination of services of teachers appointed for fixed period even though post not abolished nor regularly selected person available*—*Such termination of services violative of articles* 14 & 16.

Held, that in view of the principles laid down by the Supreme Court, we are of the opinion that where an *ad hoc* or temporary appointment is made after consideration of the candidature of all eligible persons in accordance with the equality clause, the action of the employer in limiting the appointment upto a particular date with a stipulation of automatic termination of service, even though the post is not abolished and a regularly selected person is not available, will have to be treated as wholly arbitrary, irrational,

unjust, oppressive and unconscionable and the same is liable to be struck down being contrary to Articles 14 & 16 of the Constitution.

(Para 24)

Constitution of India, 1950—Arts. 14 & 16—Ad hoc appointment—ment of petitioner with condition that services shall stand terminated on fixed date—Petitioner is not estopped from challenging the same—Condition of service or terms of employment given in contract of employment as such condition violative of Arts. 14 & 16.

Held, that in the light of law laid down by the Supreme Court and the observations made in *Veena Rani's case* we find no reason to accept the contention that the petitioner should be estopped from questioning the terms and conditions incorporated in Annexure P-1.

(Para 29)

Further held, that we allow this writ petition and declare that the condition contained in Annexure P-1 limiting he appointment of the petitioner upto 30th June, 1995 with a condition that her service shall come to an end on that day and she would stand relieved on 30th June, 1995 is arbitrary, oppressive, unconscionable and unconstitutional.

(Para 34)

Constitution of India, 1950—Arts. 14 & 16—Appointments—All appointments are required to be made in consonance with rules of equality contained in Arts. 14 & 16—Doctrine of laizzez-faire not applicable any more.

Held, that before the commencement of the Constitution of India the employment in Government used to be governed by contract of service. However, after 26th day of January, 1950 the doctrine of laizzez-faire is no more recognised in our country and the employer, pr vate as well as public, does not enjoy absolute freedom to dictate terms of employment. Public employment is regulated by the provisions contained in the Constitution as well as various legislative enactments. Arts. 14 & 16 and the rules framed under proviso to Article 309 of the Constitution regulate the right of the public employer to lay down the terms and conditions of employment.

(Para 9)

Further held, that public employment has come to be recognised as public property and all persons similarly situated have the right to share this form of property. Therefore, all appointments to public services are required to be made in accordance with the rules and the equality clauses contained in Articles 14 & 16.

(Para 9)

R. K. Malik, Advocate, *for the Petitioner.*

R. N. Raina, D.A.G. Haryana, *for the Respondents.*

JUDGMENT

G. S. Singhvi, J.

(1) In this writ petition the petitioner has prayed for quashing of the order dated 29th June, 1995 (Annexure P.3) issued by the Vice-Principal, Government Vocational Education Institute, Naultha (Panipat), terminating her service with effect from the afternoon of 29th June, 1995.

(2) The undisputed facts are that the Director, Industrial Training and Vocational Education, Haryana, called upon the Employment Exchanges to send the names of persons eligible for recruitment to the 13 posts of Language Teachers (English). The petitioner, who is a member of Scheduled Caste and who was registered with the Employment Exchange, was sponsored for selection and appointment as Language Teacher (English). A Selection Committee was constituted by the respondent No. 2 and on its recommendations order (Annexure P1) dated 2nd March, 1995 was issued by the respondent No. 2, appointing the petitioner as Language Teacher (English) in the pay scale of Rs. 1,400—1,600 on purely *ad hoc* basis for fixed term ending on 30th June, 1995 with a condition that her service would stand terminated on 30th June, 1995. Pursuant to the appointment order, the petitioner joined service on 8th March, 1995. On 29th June, 1995 the Vice Principal, Government Vocational Education Institute, Naultha (Panipat), brought about an end to the service of the petitioner by relieving her in the afternoon of 29th June, 1995 in accordance with the conditions incorporated in the letter of appointment. It is also revealed from the record that a requisition for regular recruitment against 13 posts of Language Teachers (English) has been sent to the Subordinate Services Selection Board, Haryana, but the said Board has so far not made any recommendation for regular appointment of the candidates to these posts.

(3) The petitioner has challenged the legality, propriety and fairness of the conditions incorporated in the letter of appointment on the ground that when regular posts are available and appointment on *ad hoc* basis has been made after due consideration of the candidature of the eligible persons and on the recommendation of the Selection Committee there could be no justification for limiting the appointment to 30th June, 1995, and then terminating her service on the ground that appointment was for a limited duration.

She has also pleaded that when the posts are lying vacant and regularly selected candidates have not been made available for appointment against the vacant posts, there could be no justification for terminating her service.

(4) The respondents have justified the impugned action on the ground that their action is in accordance with the terms and conditions incorporated in the letter of appointment. The main plank of their case is that a person appointed purely on *ad hoc* basis does not get a right to hold the post and therefore no writ can be issued in favour of such an *ad hoc* appointee. The respondents further say that they have the right to make appointment on the basis of the terms and conditions incorporated in the appointment letter and no right is vested in favour of any person on account of such *ad hoc* or temporary appointment.

(5) Shri Malik, learned counsel for the petitioner argued that the action of the respondents in limiting the terms of appointment of the petitioner to 30th June, 1995 is itself arbitrary and unreasonable because appointment of the petitioner was preceded by a selection made by a duly constituted Selection Committee. He submitted that when regular posts of Language Teachers are available and the candidates selected by the Subordinate Services Selection Board have not been made available there can be no justification for giving a fixed terms appointment instead of giving an appointment with a rider that the same would stand terminated on the availablity of the candidates selected by the Subordinate Services Selection Board Shri Malik further argued that the respondents cannot take advantage of their dominating position to incorporate wholly oppressive and unreasonable conditions of service and then use such condition to the detriment of the employee. He relied on the decision of this Court in C.W.P. No. 3037 of 1994 (*Dr. Subedar Singh Arya and others* v. *The State of Haryana and others*) decided on 12th May 1994 and appointed out that Special Leave Petition No. 19328—19337 of 1994 filed by the State of Haryana against the judgment of this Court stand dismissed by the Supreme Court on 27th March, 1995 after notice to the writ petitioner. He also placed reliance on a judgment of this Court in C.W.P. No. 6276 of 1994 *Veena Rani and* others v. *State of Haryana and others*) decided on 6th July, 1994. On the other hand, Shri Raina argued that after having accepted the terms and conditions contained in the letter of appointment and having taken advantage of the appointment given by the respondents, the petitioner cannot turn round and challenge the conditions contained in the letter (Annexure P1). Shri Raina further argued that

by her own conduct the petitioner is estopped from questioning the constitutionality or propriety of the conditions contained in Annexure P1. He also argued that an *ad hoc* teacher does not have a right to hold the post and such an appointee can have no *locus standi* to challenge the termination of his/her service. He relied on the decision of this Court in C.W.P. No. 13333 of 1994 decided on 24th January, 1995.

(6) When the case came up for consideration on 18th July, 1995 the Court took notice of the fact that innumerable cases are being filed before this Court by *ad hoc* appointees against the termination of their services on the basis of the conditions incorporated in the order/letter of appointment showing that the appointment was for a fixed term and that the service of the *ad hoc* appointees would come to an end automatically on the expiry of the term fixed in the order/letter of appointment. The Court felt that there was little justification for the Government to continue with the practice of making *ad hoc* appointments for fixed term against the vacant posts and then terminating the services of such *ad hoc* appointees even without the availability of the regularly selected candidates and even when the concerned Government department requires the services of the employees for various purposes. It was, therefore considered proper to direct the respondent No. 2 to remain present in person to explain the Government's position to the Court and also show as to why the action should not be taken for continued violation of the various orders passed by this Court. Today Shri R. K. Garg, Director, Industrial Training and Vocational Education Haryana, personally appeared and stated that although the posts of Language Teachers (English) are available in his Department and there is need for teaching the students who are admitted to the Course, fixed term appointments are being given in view of the instructions issued by the Government. He further stated that the Government has directed the various departments to make *ad hoc* and temporary appointments for a limited duration and terminate the services of the incumbents on the expiry of the term. On a querry made by the Court Shri Garg admitted that no order has been passed by the Government abolishing the posts of Language Teachers. He also admitted that the work of Language Teachers (English) has not come to an end and that fresh *ad hoc* appointments will be required to be made in the immediate future to meet with the requirement of teachers.

(7) From what has been stated above, it is clear that vacant posts of Language Teachers (English) were available in the Industrial

Training and Vocational Education Department and persons like the petitioner were appointed against these vacant posts after their names had been sponsored by the Employment Exchanges and their suitability for *ad hoc* appointment was adjudged by the Selection Committee. It is also borne out from the record that the candidates selected by the Subordinate Services Selection Board, Haryana, have not been made available for regular appointment on these posts and further that the work of Language Teachers (English) still exists and teachers will be required to teach the students who have been admitted to the Course.

(8) In the background of these facts we have to decide whether the Government has got an unbriddled and unchecked right to incorporate any condition of service in the order/letter of appointment and then use it for terminating the services of the employees according to its sweet-will. An ancillary question which will require adjudication is whether a person who has accepted employment on the basis of the appointment order/letter of appointment which contain a stipulation that his/her service shall stand terminated at the end of a particular period, is estopped from challenging the terms of employment or the conditions of service.

(9) Before the commencement of the Constitution of India the employment in Government used to be governed by contract of service. However, after 26th day of January, 1950 the doctrine of laissez-faire is no more recognised in our country and the employer private as well as public, does not enjoy absolute freedom to dictate terms of employment. Public employment is regulated by the provisions contained in the Constitution as well as various legislative enactments. Articles 14 and 16 and the rules framed under proviso to Article 309 of the Constitution regulate the right of the public employer to lay down the terms an conditions of employment. Where the statutory rules do not regulate recruitment and the conditions of service of the employees appointed under the Central and the State Governments, administrative instructions can be issued by the respective Governments for the said purpose. Rules framed under proviso to Article 309 of the Constitution of India and the administrative instructions issued by the Government for regulating recruitment to public services must be consistent with the equality clauses enshrined in Articles 14 and 16 of the Constitution. Public employment has come to be recognised as public property and all persons similarly situated have the right to share this form of property. Therefore all appointments to public services are required to be made in accordance with the rules and the equality clauses contained in Articles 14 and 16. Generally the rules and regulations

contemplate employment on regular basis but the right of the employer to make appointment on *ad hoc* basis or on urgent temporary basis in order to meet the varied types of situations has also been recognised by the Courts. Nevertheless while making appointment even on *ad hoc* or urgent temporary basis every public employer is duty-bound to consider the cases of all similarly situated persons and denial of such consideration may lead to the striking down of appointment.

(10) In *Dr. Swayamber Prasad Sudrania* v. *State of Rajasthan and another* (1), P. N. Shinghal, J. (as he then was) held that while making *ad hoc* appointment for fixed duration the State is under obligation to consider the cases of all eligible and similarly situated persons. The same principle has been laid down by the Apex Court in *State of Haryana* v. *Piara Singh* (2). In that case the Supreme Court has laid down that for making *ad hoc* appointment also the employer should issue short-term advertisement either in the newspaper or adopt some other well recognised mode of publication and consider the candidature of all those who are eligible and who apply in pursuance of such advertisement.

(11) The methodology of making appointment on *ad hoc*/urgent temporary basis has been adopted by almost all public employers including the Central and State Governments. This is particularly so in the cases of teachers and doctors. There is a constant realisation by the various Governments that teachers are required for imparting education to the children and unless well-equipped hands are available to impart education, the Constitutional goal, namely "education for all" will remain a distant reality. The Governments are also aware of the fact that the Public Service Commissions and other selecting agencies take their own time to complete the formalities of selection, but the education of the children cannot wait for that long period. Therefore, in order to meet with the demands of education and keeping in view the larger public interest, the Governments have been resorting to the methodology of *ad hoc* appointments of teachers. It is difficult to find any fault with this policy of the Government to make *ad hoc* appointments of teachers. Nevertheless the execution of this policy by the administrative authorities has led to to unending chain of litigation. The power possessed by

(1) 1971 (2) SLJ. 767.
(2) 1992 (4) S.C.C. 118.

the administrative authorities to make *ad hoc* appointment of teachers has, on many occasions, been misused by giving fixed term appointments against regular posts and then terminating the services of such appointees for making fresh *ad hoc* appointments. It has become a usual practice of giving appointment to the teachers for few days or months with a stipulation that services of such teachers would come to an end on the specified date and further that the appointing authority reserves to itself the right to terminate the employment at any time without notice and without assigning any reason.

(12) The methodology of making *ad hoc* appointment for a fixed term with a condition that the appointment would come to an end on the specified date came under scrutiny of the Supreme Court in *Rattan Lal and others* v. *State of Haryana and others* (3). That was a case in which the Government was resorting to the methodology of *ad hoc* appointment upto the end of academic session and then giving fresh appointments after the summer vacations. The Apex Court noted that the State Government of Haryana has failed to discharge its duty to make appointment of teachers inaccordance with the rules and observed that *ad hoc* appointments are being made to deprive the teachers of the benefits which are available to regularly selected persons. The Supreme Court observed :—

> ".....These *ad hoc* teachers are unnecessarily subjected to an arbitrary 'hiring and firing' policy. *These teachers who constitute the bulk of the educated unemployed are compelled to accept these jobs on an* ad hoc *basis with miserable conditions of service. The Government appears to be exploiting this situation. This is not a sound personnel policy.* It is bound to have serious repercussions on the educational institutions and the children studying there. The policy of 'ad hocism' followed by the State Government for a long period has led to the breach of Article 14 and Article 16 of the Constitution. Such a situation cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer."
>
> (Underlining is ours)

In *Raj Bala* v. *State of Punjab* (Civil Original Appellate Jurisdiction Case No. 125/87) their Lordships of the Supreme Court accepted the

(3) A.I.R. 1987 S.C. 478.

claim made by the *ad hoc* appointees to be continued in service till the availability of the regularly selected candidates. The order passed by the Supreme Court in *Raj Bala's case* (supra) reads thus.

"In the SUPREME COURT OF INDIA Civil Original Jurisdiction Writ Petition No. 125 of 1987.

RAJ BALA & OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB & ANOTHERS,—*Respondents.*

ORDER

Heard counsel for both the sides. It appears that a similar matter has been disposed of by his Court on August 24, 1987, in Writ Petition No. 317 of 1987 wherein this Court directed :

After hearing learned counsel for the parties, we allow the writ petition and direct the respondents to continue the petitioners in service until persons regularly selected by the Punjab Service Commission are appointed to the posts presently held by the petitioners and join these posts. These petitioners who have been appointed to posts in leave vacancies will continue in these posts until the employees who have proceeded on leave return and join these posts."

We dispose of this writ petition by ordering that subject to one clarification that the State of Punjab would not be permitted to terminate the services of any of the petitioners by transferring a regular recruit from another institution to any institution where any of the petitioners may be serving. Termination would be valid only when direct recruits through the Public Service Commission are recruited to such posts.

Sd/- Ranganath Misra, J.

Sd/- S. Ranganathan, J."

(13) In *Rajbinder Singh* v. *State of Punjab and others* (4), their Lordships of the Supreme Court allowed the claim of an *ad hoc*

(4) 1988 (1) S.L.R. 351.

Lecturer to be continued in service. In that case the following order was passed by the Supreme Court :—

> "The petitioner in an *ad hoc* lecturer. He was appointed for a term. His grievance is that he is likely to be removed from service so that he may be deprived of his vacation salary. It appears that the practice of the respondents is to appoint fresh people every time.
>
> 2. This Court in a number of writ petitions (W.P. 125/87 and 317/1987) has allowed the *ad hoc* teachers to continue in service while person regularly selected by the P.S.C. are appointed to the posts. The respondent ought to extend the benefit of that order to all other *ad hoc* lecturers. It is not proper to drive them to this court for securing similar relief. We make it clear that the petitioner and other similar *ad hoc* teachers are entitled to the benefit of the order of this court made in the aforesaid writ petition. Petition allowed."

(14) In *State of Haryana* v. *Piara Singh* (supra) the Supreme Court held that an *ad hoc* or temporary employee should not be replaced by another *ad hoc* or temporary employee and he must be replaced only by a regularly selected employee. This, according to the Supreme Court, was necessary to avoid arbitrary action on the part of the appointing authority.

(15) In C.W.P. No. 1551 to 1594 of 1984 (*Sahib Singh* v. *Union Territory of Chandigarh and others*), decided on 13th August, 1984, their Lordships of the Supreme Court directed that the petitioners, who were appointed on *ad hoc* basis, shall be continued in service until the Government make regular appointments on the recommendations of the Public Service Commission.

(16) In C.W.P. No. 3037 of 1994 (*Dr. Suzedar Singh Arya and 17 others* v. *State of Haryana and others*) decided on 12th May, 1994, a Division Bench of this Court was called upon to decide a question which is almost similar to the question which has been posed before us. The petitioners in that case had challenged the action of the State Government in restricting their *ad hoc* appointments upto 15th March, 1994 as violative of Articles 14 and 16 of the Constitution. The respondents in that case placed reliance on the Full Bench judgement of this Court in *Sant Ram Bhal* v. *State of Haryana and another* (5), *Dharambir Singh* v. *State of Haryana and another* (6),

(5) 1992 (1) R.S.J. 761.

(6) 1993 (2) Service Cases Today 654.

and also on a decision of this Court in *S. K. Verma and others* v. *State of Punjab and others* (7), and argued that on *ad hoc* appointee does not have any right to hold the post. The Division Bench made reference to the various judgments of the Supreme Court and of this Court and held that the law laid down in *Sant Ram Bhal's case* (supra), *Dharambir Singh's case* (supra) and *S. K. Verma's case* (supra) did not have any direct bearing on the issue raised before the Division Bench. The Division Bench held that making of *ad hoc* appointments for fixed term was wholly arbitrary and unjustified. The following observations made by the Court in *Dr. Subedar Singh Arya's case* (supra) are quite instructive :—

> "Besides the fact that the claim of the petitioners is well founded in view of the ratio of Hon'ble the Apex Court, *we may add that the policy of the Government in making temporary appointment of the Lecturers for specific period or for one particular session and thereafter terminating their services and resorting to fresh appointments and thus repeating the same procedure in the next session and in the subsequent session is wholly arbitrary and unreasonable and contrary to the provisions of Articles* 14 *and* 16 *of the Constitution of India* ; Incorporation of Arbitrary terms in the order of appointment are not sustainable. We may straighway observe that a person who is appointed in public employment cannot ordinarily choose the terms and conditions under which he is required to serve the employer. The Employer is always in a dominant position and it is open to the employer to dictate the terms of employment. The employee who is at the receiving end can hardly complain of arbitrariness in the terms and conditions of employment. Any challenge by the employee to the terms and condition of employment at that stage will cost his/her job itself. *The bargaining power of the employer is so overwhelming that the employee is left with no option but to accept the conditions dictated by the employer. It is well settled that such condition of employment which is arbitrary, unreasonable or unconscionable, can be declared as unconstitutional on the grounds of violation of Articles* 14 *and*

(7) A.I.R. 1979 Punjab and Haryana 149.

16 *of the Constitution of India, which even otherwise is opposed to public policy.*"

(Underlining is ours)

(17) We may also mention that against the judgment of the Division Bench in *Dr. Subedar Singh Arya's case* (supra), the State of Haryana preferred special leave petition before the Supreme Court. While dismissing S.L.P. No. 19328 of 1994 and other connected special leave petitions on 27th March, 1995, the Supreme Court held that the State had already advertised the posts and the same would be filled after selection and there could be no difficulty in continuing the respondents in service. This order was passed by the Supreme Court after notice to the writ petitioners. It is, therefore, reasonable to hold that the views expressed by the Division Bench in *Dr. Subedar Singh Arya's case* (supra) have been approved by the Apex Court.

(18) In C.W.P. No. 6276 of 1994 (*Veena Rani and others* v. *State of Haryana and others*), decided on 6th July, 1994, a Division Bench of this Court, of which one of us was a member, decided the legality of conditions contained in the letter of appointment, which were pari materia with the conditions contained in the appointment letter of the petitioner. The petitioners in that case had also challenged the order passed by the authorities of the Education Department seeking to relieve them on the expiry of the term of appointment. While commenting on the conditions incorporated in the appointment order/letter limiting the appointment to a particular date, the Division Bench observed :—

".....It is indeed a matter of concern for the Courts that such conditions are incorporated in the orders of appointment of those who are recruited through the agency of employment exchange or by short term advertisement. *How can the Government serve the larger public interest by appointing a person as teacher for a few days or months and then replacing him by a fresh hand. The Courts can take notice of the fact that once a person is appointed as teacher/lecturer and he teaches the students for a particular length of time, he acquires some experience, which enhanced his efficiency for future. More importantly after teaching his students for some time, a teacher establishes a rapport with the students and that rapport greatly helps the students in their education.* We must not be *taken as suggesting that a person appointed as a teacher/lecturer on ad hoc basis acquires a right to hold the post*

and that he cannot be replaced by a person who is appointed in accordance with the procedure prescribed for regular selection. However, we wish to emphasize that the practice of replacing a teacher by appointing a new hand not only causes injury to the fresh ad hoc *appointee but also results in serious injury to the public interest.* If the students are subjected to teaching by raw and fresh hands every time under the garb of policy of giving *ad hoc* appointment for a fixed term or till the end of academic session, it can certainly be said that none else than the students community suffers. The absence of continuity of teaching by one person authomatically results in breach of the rapport between the teacher and the taught, which is otherwise absolutely imperative for better education."

(Emphasis supplied)

The Division Bench then took notice of the decision of the Full Bench in *Sant Ram Bhal's case* (supra) and the decision of the Division Bench in *Dr. Subedar Singh Arya's case* (supra) and observed :—

"In addition to what the Division Bench has held in *Dr. Subedar Singh Arya's case*, we may add that in *Sant Ram Bhal's case* (supra), the questions which were placed for consideration before the Full Bench were altogether different. One of the questions that the Full Bench required to answer was as to whether any right was created in a person, who had been given promotion on *ad hoc* basis. The other question was as to whether termination of *ad hoc* promotion and reversion of the petitioner to his original post was arbitrary and unreasonable and consequently violative of Article 14 of the Constitution of India. The Full Bench answered those two questions and held that a person who has been given *ad hoc* promotion does not get a right to hold the post. He can be reverted without giving him a cause to challenge the same. Though the Full Bench had made some observations suggesting that a person who is given appointment with a condition that he is liable to be reverted at any time and that he cannot complaint of reversion if the employer exercise his right in terms of the order of appointment, those observations will have to be confined in the scope of the

context of the questions, which were referred to the Full Bench for adjudication. We are also of the opinion that once the Supreme Court has in *State of Haryana* v. *Piara Singh's* case (supra) ruled that Government does not have a right to terminate the service of an *ad hoc* appointee only to replace him by another *ad hoc* appointee, observations of the Full Bench, if at all they are contrary to the said dictum will have to be ignored. The decision of the Full Bench, if it is interpreted in the manner suggested by the learned counsel appearing for the respondents will run contrary to the decision of the Supreme Court and in our opinion, there is no reason to accept such an interpretation of the Full Bench decision. We are clearly of the view that the declaration of judgment in *Dr. Subedar Singh Arya's* case (supra) reflects the correct position of law."

(18) In addition to the above-noted cases, we deem it proper to refer to some decisions which deal with the contents and scope of Articles 14 and 16 of the Constitution of India. In *S. G. Jaisinghani* v. *Union of India* (8), Ramaswamy, J. indicated the test of arbitrariness in the following words :—

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicy—"Law of the Constitution"—Tenth Edn., Introduction cx). "Law has reached its finest moments", stated Douglas, J. in *United States* v. *Sunderlick* (1951-342 US 98 : 96 Law Ed. 113), "When it has freed man from the unlimited discretion of some ruler.....Where discretion is absolute, man has

(8) A.I.R. 1967 S.C. 1427.

always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes (1770—98 ER 327), "means sound discretion guided by law. It must be governed by rule, not humour: it must not be arbitrary, vague and fanciful."

(19) In *E. P. Royappa* v. *State of Tamil Nadu and another* (9), a Constitution Bench of the Supreme Court examined the inter-relationship between Articles 14 and 16 and observed that Article 14 is the genus while Article 16 is a species. Their Lordships then proceeded to observe :

"..... ..The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhabition against discrimination. Now, what is the content and reach of this great equalising principle ? It is a founding faith, to use the words of Bose, J. "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable a like to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind is not legitimate and relevant but is extraneous and outside the area of permissible considerations it would amount of *mala fide* exercise of power and that is hit by Articles 14 and 16. ....

It is also necessary to point out that the ambit and reach of Articles 14 *and* 16 *are not limited to cases where the public servant affected has a right to a post.* Even if a public servant is in an officiating position, he can complain of violation of Articles 14 and 16 if he has been arbitrarily or unfairly treated or subjected to *mala fide* exercise of power by the State machine. *It is, therefore, no answer to the charge of infringement of Articles* 14 *and* 16 *to say that the petitioner had no right to the post of Chief Secretary but was merely officiating in that post.* That might have some relevance to Article 311 but not to Articles 14 and 16. ...."

(Emphasis supplied).

(20) In *Ramana Dayaram Shetty* v. *The International Airport Authority of India and others* (10), their Lordships of the Supreme Court approved the observations made in *Vitarelli* v. *Seaton* (12), by Mr. Justice Frankfurter that rule against arbitrary exercise is a rule of administrative law which has been judicially evolved. The Supreme Court further observed that in a democracy governed by the rule of law the executive Government or any of its officers does not possess arbitrary power over the interest of the individual and every action of the administration should be informed with reason and should be free from arbitrariness. In *M/s Kasturi Lal Lakshmi Reddy, etc.* v. *The State of Jammu & Kashmir and another* (11), their Lordships of the Supreme Court held that every activity of the Government has a public element in it and therefore it must be informed with reason and guided by public interest. In *Mahabir Auto Stores and others* v. *Indian Oil Corporation and others* (13), it was held that the State when acting in its executive power enters into a contractual relationship with the individual, Article 14 would be applicable to the exercise of the power and if the Governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. Their Lorships further held that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens. In *Kumari Shrilekha Vidyarthi etc.* v. *State of U.P. and others* (14), their

(10) A.I.R. 1979 S.C. 1628.
(11) A.I.R. 1980 S.C. 1992.
(12) (1959) 359 U.S. 535.
(13) A.I.R. 1990 S.C. 1081.
(14) A.I.R. 1991 S.C. 537.

Lordships of the Supreme Court reviewed the entire case law on the subject and observed that even in contractual matters the State action must be free from arbitrariness. The Supreme Court quoted with approval some of the extracts of Administrative Law by Prof. Wade and then observed that all the actions of the State or a public body are subject to Article 14 even though they fall in the realm of contract. Some of the observations made by their Lordships in *Kumari Shrilekha Vidyarthi's* case (supra) are:—

> "It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. While the discretion to change the policy in exercise of the executive power, when not trammelled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Article 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. *The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touch-stone, irrespective of the field of activity of the State has long been settled.* Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent decisions of this Court for this purpose.
>
> ... ...
>
> ... ...

(21) In our opinion, the wide sweep of Article 14 undoubtedly takes within its fold the impugned circular issued by the State of U.P. in exercise of its executive power, irrespective of the precise nature of appointment of the Government counsel in the districts and the other rights, contractual or statutory, which the appointees may have. *It is for this reason that we base our decision on the ground that independent of any statutory right, available to the appointees, and assuming for the purpose of this case that the rights flow only from the contract of appointment, the impugned circular, issued in exercise of the executive power of the State, must satisfy Article 14 of the Constitution and if it is shown to be arbitrary, it must be struck down.* However, we have referred to certain provisions relating to initial appointment, termination or renewal of

tenure to indicate that the action is controlled at least by settled guidelines, followed by the State of U.P., for a long time. This too is relevant for deciding the question of arbitrariness alleged in the present case.

(22) It is now too well settled that every State action, in order to survive, must not be susceptible to be vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is *sine qua non* to its validity and in that respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind."

(Emphasis supplied).

(23) In *L.I.C. of India and another* v. *Consumer Education and Research Centre and others* (15), their Lordships once again reiterated the principle that every action of the public authority or the person acting in public interest or its acts give rise to public element should be guided by public interest and if it is shown that the exercise of power is arbitrary, unjust and unfair, it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law. The Court further held that all such actions must be guided by the relevant instructions and must be in public interest.

(24) In view of the principles laid down by the Supreme Court we are of the opinion that where an *ad hoc* or temporary appointment is made after consideration of the candidature of all eligible persons in accordance with the equality clause, the action of the employer in limiting the appointment upto a particular date with a stipulation of automatic termination of service, even though the post is not abolished and a regularly selected person is not available, will have to be treated as wholly arbitrary, irrational, unjust, oppressive and unconscionable and the same is liable to be struck down being contrary to Articles 14 and 16 of the Constitution. It may be a different situation where an appointment is given for a specified work and the post is created only for that work and the service of the employee is terminated due to the cessation of work

(15) J.T. 1995 (4) S.C. 366.

or where a condition is incorporated in the contract of employment that the service of the employee will stand terminated on the availability of selected candidate. However, there cannot be any justification to limit the appointment to a particular date merely because the employer chooses to describe the employment as *ad hoc*. In our opinion, the employer cannot use his prerogative to lay down the terms and conditions of employment by incorporating a condition that the service of the employee will stand terminated on a particular date even though the post continues to remain available and the employer requires man power for doing the work in relation to that post. Such condition in the order/letter of appointment in case of the teachers cannot but be termed as unreasonable and contrary to public interest. The student community as a whole is the worst sufferer on account of non-availability of teachers and the executive authorities cannot be permitted to act arbitrarily by incorporating wholly unreasonable conditions of employment in the order of appointment of the teachers.

(25) We may now deal with the argument of Shri Raina that the petitioner is estopped from challenging the terms and conditions incorporated in the order (Annexure P1) because she accepted these conditions with open eyes and without any protest. The crux of Shri Raina's argument is that after having accepted appointment with the terms and conditions incorporated in Annexure P1, the petitioner cannot be permitted to challenge a part of Annexure P1. In our opinion, this argument of Shri Raina is wholly misconceived. A similar argument has been considered and rejected in *Veena Rani's case* (supra). While rejecting the argument of the Government Advocate, which was founded on the plea of estoppel, the Division Bench observed :—

> ".....We cannot remain totally oblivious of the soaring unemployment in this country and in most of the other parts of the world. Almost all countries of the third world are facing problem of ever increasing unemployment of younger generation. Even in the developed countries like United Kingdom and United States of America the percentage of unemployed youth is constantly increasing. Ours is a country where vast majority falls in the category of haves not. Employment in public services gives a sense of security to the employees. Ordinarily, the public employment cannot resort to theory of 'hire and fire', therefore, public employment is accepted

irrespective of onerous, arbitrary and unreasonable conditions which are incorporated in the orders of appointment. In fact, the employer is always in a dominating position *qua* a person who seeks employment. *One who applies for being appointed on temporary* or ad hoc *basis and even on regular basis is not in a position to enter into a bargain with the prospective employer about the terms and conditions of an employment. He can never be in a position to dictate the terms to be incorporated in the contract of employment* or *in the order of appointment. It is always the will of the employer which prevails.* Taking benefit of this position, the public employer who is governed by the constitutional provisions cannot incorporate such conditions in the contract of employment or in the order of appointment which are unconscionable, arbitrary or unreasonable. ....."

(Emphasis supplied).

(26) In *The Manager, Government Branch Press and another* v. *D. B. Belliappa* (16), a three Judges Bench of the Supreme Court dealt with the right of the employer to terminate the service of a temporary employee without any reason. Their Lordships of the Supreme Court unequivocally rejected the argument that termination of service was brought about in accordance with the terms and conditions of employment as would appear from the observations made in para 24 of the judgment. The Supreme Court also noticed contention of the counsel appearing for the employer that once the employee voluntarily entered into a contract of service, he cannot complain against the action of the employer. This contention has also been rejected by the Supreme Court. The observations made by the Supreme Court on this issue are quite instructive and, therefore, we quote them hereunder :—

"25. Another facet of Mr. Veerappa's contention is that the respondent had voluntarily entered into a contract of service on the terms of employment offered to him. One of the terms of that contract, embodied in the letter of his appointment is that his service was purely temporary and was liable to termination at the will and pleasure of the appointing authority, without reason and without notice. *Having willingly accepted the employment on terms offered to him, the respondent cannot complain*

(16) A.I.R. 1979 S.C. 429.

against the impugned action taken in accordance with those mutally agreed terms. The argument is wholly misconceived. It is borrowed from the archaic common law concept that employment was a matter between the master and servant only. In the first place, this rule in its original absolute form is not applicable to Government servants. Secondly, even with regard to private employment, much of it has passed into the fossils of time. "This rule held the field at the time when the master and servant were taken more literally than they are now and when as in early Roman Law, the rights of the servant, like the rights of any other member of the house-hold, were not his own but those of his pater families." The overtones of this ancient doctrine are discernible in the Angro-American jurisprudence of the 18th century and the first half of the 20th century, which retionalised the employer's absolute right to discharge the employee. *"Such a philosophy", as pointed out by K. K. Mathew, J.*—(vide *his treatise : "Democracy, Equality and Freedom", page* 326) *"of the employer's dominion over his employee may have* been in tune with the rustic simplicity of bygone days. *But that philosophy is incompatible with these days of large, impersonal, corporate employers."* To bring it in tune with vastly changed and changing socio-economic conditions and mores of the day, much of this old, antiquated and unjust doctrine has been eroded by judicial decisions and legislation, particularly in its application to persons in public employment, to whom the constitutional protection of Articles 14, 15, 16 and 311 is available. The argument is therefore overruled."

(Underlining is ours)

(27) A similar argument about the contractual nature of employment has been considered and rejected in *Central Inland Water Transport Corporation Ltd.* v. *Brojo Nath Ganguly* (17), *D.T.C.* v. *D.T.C. Mazdoor Congress* (18), *and L.I.C. of India and another* v. *Consumer Education and Research Centre and others* (supra). In first two of these three cases their Lordships of the Supreme Court dealt with a clause contained in the rules authorising the employer to terminate the service of a permanent employee by giving three

(17) A.I.R. 1986 S.C. 1571.
(18) A.I.R. 1990 (1) Supp. S.C.C. 600.

months' notice. In *Central Inland Water Transport Corporation's case* their Lordships of the Supreme Court held :—

> "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 thories ? Should the strong be permitted to push the weak to the wall ? Should they be allowed to ride rought shod over the weak ? Should the courts sit back and watch supinely while the strong trample under 5 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 discussion 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 Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike and unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the speaker 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 or 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."

(28) In the second case their Lordships held that freedom of contract must be founded on equality of bargaining power between the contracting parties. They further held that there can be myriad situations which result in unfair and unreasonable bargaining between parties possessing wholly disproportionate and unequal bargaining power. In the last mentioned case a policy decision of the Life Insurance Corporation limiting a particular insurance policy to salaried class from Government, Semi-Government or reputed commercial firms was held to be unconstitutional.

(29) In the light of above enunciation of law by the Supreme Court and the observations made in *Veena Rani's case* (supra) we find no reason to accept the contention of Shri Raina that the petitioner should be estopped from questioning the terms and conditions incorporated in Annexure P1. Placed in the position of the petitioner, no reasonable man could have possibly protested against the arbitrary and oppressive conditions of appointment. If despite her merit and the seniority with the Employment Exchange, the petitioner had dared to protest against the condition limiting her appointment to 30h June, 1995, she would have done so to her own peril. In our view, she was not in any position to challenge the right of the respondents to give a limited appointment to her even though the post of Language Teacher was available and even though there was no possibility of selected hands being available by the Subordinate Services Selection Board. Thus, her failure to object to the conditions incorporated in Annexure P1 cannot be made a ground for denying relief to her.

(30) The judgments of this Court in *S. K. Verma* v. *State of Punjab* (supra), *Dharambir Singh* v. *State of Haryana* (supra), and *Sant Ram Bhal* v. *State of Haryana* (supra), have been considered and distinguished by the Division Bench in *Dr. Subedar Singh Arya's case* (supra). We may once again observe that in *S. K. Verma's case* (supra) the main point adjudicated by the Court related to the nature of *ad hoc* appointment. In *Om Parkash Sharma* v. *State of Haryana* (19), a Division Bench of this Court did notice the various judgments of the Supreme Court, some of which have been referred to in this order as well and it was held that service of an *ad hoc* appointee can be terminated in accordance with the contract of employment Similarly in *Sant Ram Bhal's case* (supra) the main questions which were posed before the Full Bench pertained to the right of an *ad hoc* appointee to hold the post on which he/she had been promoted. It was held that an *ad hoc* promotee does not have a right to hold the post and he can be reverted without giving him a show-cause notice and he cannot challenge such reversion/termination of service. However, in none of the afore-mentioned cases the validity of the conditions incorporated in the contract of employment was raised and adjudicated by this Court. Therefore, the judgments in *S. K. Verma's case* (supra), *Dharambir Singh's case* (supra) and *Sant Ram Bhal's case* (supra) which have been duly considered by the two Division Benches in *Dr. Subedar Singh Arya's case* (supra) and *Veena Rani's case* (supra) cannot be made the basis for refusing relief to the petitioner. In the two Division Bench judgments it has been laid down that the incorporation of arbitrary and oppressive conditions of service amounts to violation of Articles 14 and 16 of the Constitution and, therefore, the present case, in which similar challenge has been made by the petitioner, deserves to be decided in the light of those two decisions.

(31) The judgment of the Division Bench in C.W.P. No. 13333 of 1994 (*Bhartendu Sharma* v. *State of Haryana*), on which reliance has been placed by Shri Raina, is of no help to the case of the respondents. A careful reading of that judgment shows that the Division Bench which decided *Bhartendu Sharma's case* (supra) was not called upon to adjudicate upon the constitutionality of conditions of service incorporated in the letter of appointment. That judgment is limited to the consideration of the claim made by an *ad hoc* appointtee to continue in service after the expiry of the term

(19) 1981 (1) S.L.R. 314.

of employment. By placing reliance on the Full Bench judgments of this Court and observations made by the Supreme Court in *State of Uttar Pradesh* v. *Kaushal Kishore Shukla* (20), the Division Bench rejected the claim of the petitioner. No doubt, reference in that judgment has been made to the decision in *Dr. Subedar Singh's case* (supra) and another judgment in C.W.P. No. 8977 of 1994 (*Sunil Kumar and others* v. *State of Haryana and another*), but there is no reference to the other judgment in *Veena Rani's case* (supra). In *Sunil Kumar's case* (supra) decided on 20th July, 1994 reference has been made to the judgments of *Dr. Subedar Singh's case* (supra) and *Veena Rani's case* (supra) but in the subsequent judgment in *Bhartendu Sharma's case* (supra) attention of the Court was not invited to the detailed judgment in *Veena Rani's case* (supra). Thus the judgment in *Bhartendu Sharma's case* (supra) cannot be read as laying down a proposition of law that the employer has absolute right to incorporate arbitrary and unconstitutional conditions of service, and that judgment is clearly distinguishable. That apart, even in *Bhartendu Sharma's case* the Division Bench has impliedly followed the principle that the Government cannot replace an *ad hoc* employee with another *ad hoc* employee and precisely for this reason the Court directed that in case appointment to the post in question to be continued on *ad hoc* basis, then the petitioner shall be appointed to that post as an *ad hoc* employee instead of any other candidate till a duly selected candidate is made available.

(32) The decision of the Supreme Court in *State of Uttar Pradesh* v. *Kaushal Kishore Shukla* (supra) has really no relevance to the controversy involved in this case. In that decision their Lordships of the Supreme Court were concerned with a case where servant of the respondent, who was an *ad hoc* appointee, was terminated due to unsatisfactory work and conduct and on the ground that he was unsuitable for the service. The High Court of Allahabad had interferred with the termination on the ground that juniors were retained in service. Their Lordships held that the rule of 'Last Come First Go' is not applicable to a case where service of a temporary employee is terminated on the assessment of his work and suitability in accordance with the terms and conditions of his service. The Supreme Court further held that a senior can be removed from service if he is found unsuitable and in that case

(20) 1991 (1) S.L.R. 606.

retention of a junior in the service does not give any right to the senior to complaint violation of Articles 14 and 16. The Supreme Court has made some observations to the effect that a temporary Government servant has no right to hold the post but these are the observations made in the context of Article 311 of the Constitution. Therefore, that decision cannot be of any assistance to the respondents.

(33) Before concluding, we consider it appropriate to take note of the fact that due to the failure of the various Departments of the Government of Haryana to undertake exercise for regular appointments, ad hoc appointments are made which continue for years together and then the policies of regularisation are issued virtually sidelining the agencies like the Haryana Public Service Commission and the Subordinate Services Selection Board. A number of cases have come before this Court involving disputes relating to *ad hoc* appointees. This type of litigation can be avoided if the Government sends requisitions to the Haryana Public Service Commission and the Subordinate Services Selection Board, which are Constitutional/statutory bodies entrusted with the task of making recommendations for selection. As in the present case, in most of the other departments of the Government of Haryana regular selections have not been made, necessitating ad hoc appointments. Those who become eligible continue to wait without even a change of being considered for selection and regular appointment at times such persons become overaged by the time the process of regular selection is initiated. It is, therefore, necessary to direct the Government of Haryana to send requisition of the posts lying vacant to the Haryana Public Service Commission and the Subordinate Services Selection Board, so that these agencies may take steps for regular selections.

(34) In the result, we allow this writ petition and declare that the condition contained in Annexure P1, limiting the appointment of the petitioner upto 30th June, 1995 with a condition that her service shall come to an end on that day and she would stand relieved on 30th June, 1995, is arbitrary, oppressive, unconscionable and unconstitutional. As a logical consequence, the termination of the service of the petitioner,—*vide* Annexure P3 is also declared illegal and quashed with a direction that the petitioner shall be taken back in service with all consequential benefits. We, however, make it clear that she shall have no right to continue in service after the availability of regularly selected candidates and also that the employer shall have right to terminate her service on account of

unsatisfactory work even though the regularly selected candidate may not be available. We further direct the Government of Haryana to take immediate steps for sending requisitions to the Haryana Public Service Commission and the Subordinate Services Selection Board regarding the vacant posts for the purpose of making regular selections.

(35) Parties are left to bear their own costs.

J.S.T.

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