

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

.....
LPA no.34/2026
In WP(C) no.2314/2023
CM no.983/2027 &
LPA no.27/2026
CM nos.873-874/2026

Reserved on: 05.05.2026
Pronounced on: 20.05.2026
Uploaded on: 20.05.2026

LPA no.34/2026

1. Jammu and Kashmir Bank Ltd. Corporate Headquarters, M.A.Road Srinagar through its Chairman
2. President (HR), J&K Bank Ltd. Zonal Headquarter, Zonal Office, Rail Head Complex, Jammu
3. Vice President (HR) J&K Bank Ltd. Zonal Headquarter, Zonal Office, Rail Head Complex, Jammu
4. Executive (HR) J&K Bank Ltd. Zonal Headquarter, Zonal Office, Rail Head Complex, Jammu

..... Appellant(s)

Through: Mr Raman Sharma, Sr. Advocate with
Mr Kartikay Sharma, Advocate

Versus

Tanu Gupta D/o Sh Ramesh Kumar Gupta R/o H.no.276, Lane no.5, Talab Tillo, Jammu

.....Respondent(s)

Through: Mr Amit Gupta, Sr. Advocate with
Mr Sumit Moza, Advocate

LPA no.27/2026

1. Jammu and Kashmir Bank Ltd. Corporate Headquarters, M.A.Road Srinagar through its Chairman
2. President (HR), J&K Bank Ltd. Zonal Headquarter, Zonal Office, Rail Head Complex, Jammu
3. Vice President (HR) J&K Bank Ltd. Zonal Headquarter, Zonal Office, Rail Head Complex, Jammu
4. Executive (HR) J&K Bank Ltd. Zonal Headquarter, Zonal Office, Rail Head Complex, Jammu

..... Appellant(s)

Through: Mr Raman Sharma, Sr. Advocate with
Mr Kartikay Sharma, Advocate

Versus

1. Basu Magotra W/o Arjun Khajuria R/o H.no.252, Sector-6, Channi Himmat, Jammu
2. Isha Sudan D/o Mr. Anil Sudan R/o H.no.197, Ward no.19, J&K Board Line, Shiva Nagar, Kathua
3. Bintul Hudda W/o Feroz Ali Mir R/o Khandah Budgam A/p Quarter no.13, Block-D, Police Housing Colony, Sidhra, Jammu

.....Respondent(s)

Through: Mr Amit Gupta, Sr. Advocate with
Mr Sumit Moza, Advocate

CORAM:

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR JUSTICE RAJNESH OSWAL, JUDGE**

JUDGEMENT

1. The life of a working mother stands as a profound testament to the ancient Sanskrit ideal of '*Kshamaya Dharitri/क्षमाया धरित्री*'—a patience as vast and enduring as the Earth itself. She navigates the demanding currents of the professional world with adept skill (*Lokavritt Kaushal/लोकवृत्त कौशल*), whilst simultaneously shouldering the silent, unremunerated, and all too often invisible labor of the household (*Gruhakarmanyapi / गृहकर्मण्यपि*).
2. The profound pain of childbirth is merely the opening chapter in a lifelong narrative of sacrifice. To deny maternity benefits is not only to ignore this profound 'double burden,' but to fail entirely in our constitutional obligation to ensure a level playing field for those who literally labor to bring the next generation of citizens into existence.
3. It is precisely this fundamental controversy that lies at the heart of the present intra-court appeals.

4. Through the common judgment dated 25.08.2025 rendered by the learned Writ Court, the writ petitions titled “*Basu Magotra & Ors. Vs. Jammu and Kashmir Bank Ltd. & Ors*” bearing WP(C) No. 1065/2022 and “*Tanu Gupta Vs. Jammu and Kashmir Bank Ltd. & Ors*” bearing WP(C) No. 2314/2023, were allowed, and disposed of in terms of following directions:

“In this view of the matter, the petitions are allowed. The impugned orders are hereby quashed, and the respondents are directed to treat the period spent on maternity leave as continuous service, without discounting these periods, for their assessment on competition of two years, from their joining dates. They shall also extend all the benefits to the petitioners pursuant to Circular No. 752 dated 12 .03.2021 including revised pay scale, adjustment pay/variable pay etc. as have been given to similarly situated Banking Associates appointed alongside the petitioners, along with consequential benefits, with retrospective effect”

5. Aggrieved by the judgment dated 25.08.2025, the appellants have filed two separate intra-court appeals: LPA No. 27/2026 (arising out of the case of *Basu Magotra & Ors.*) and LPA No. 34/2026 (arising out of the case of *Tanu Gupta*). As both appeals challenge the impugned judgment on common grounds, they are being disposed of by this common judgment.

6. Grounds of Challenge:

- a. That the engagement of the respondents was on a contractual basis for a period of two years, after which they were to be regularised subject to a successful work assessment. Although the contractual terms did not specifically provide for the grant of maternity leave, the appellants, upon requests made by the respondents, sanctioned extraordinary leave for periods of 118, 83, 181, and 176 days in

favour of Tanu Gupta, Basu Magotra, Isha Sudan, and Bintul Hudda, respectively. This leave was sanctioned with the explicit stipulation that their contractual terms would stand extended by the corresponding period of the leave. The respondents availed of this leave without any demur or protest. However, after availing the benefit, they resiled from their position and challenged their regularisation orders, which had excluded the maternity leave period from the initial two-year contractual service. Having accepted the conditions stipulated in the leave sanctions, the respondents are estopped from raising a grievance against the same. The learned Writ Court completely failed to consider this crucial aspect of the matter; hence, the impugned judgment deserves to be set aside.

- b. That the respondents cannot be deemed to have rendered continuous service for two years since they were on sanctioned leave for a significant duration. Their regularisation was therefore rightly deferred until they completed the remaining period of their contractual service. The appellants acted strictly in accordance with the terms of engagement, a fact that the learned Writ Court completely overlooked.
- c. That the learned Writ Court heavily relied upon various judgments that uphold the rights of women to avail of maternity leave. However, in the present case, maternity leave was never denied to the respondents; rather, it was fully granted. The period of their contractual engagement was merely extended proportionately to ensure they completed the requisite period of active service necessary to determine their suitability for regularisation. The

learned Writ Court completely failed to appreciate this vital distinction.

- d. That the appellants, vide Board Resolution dated 26.04.2021, had resolved that the variable pay and platinum jubilee pay (linked to basic pay) of all regular employees on the rolls of the Bank as on 31st December 2020 be frozen (based on the revised pay scales) w.e.f. 01.01.2021 and termed as 'Adjustment Pay', payable only to those regular employees who were drawing it as a salary component as on 31st December 2020. Pursuant to Circular No. 752 dated 12th March 2021, this component of Adjustment Pay was not made part of the salary for employees appointed or regularised after 31st December 2020. Since the respondents were regularised only by virtue of orders passed in their favour later in 2021 (following their extended contractual terms), they were not entitled to the benefits of the said Circular. Having accepted the extension of their contractual terms without protest, the respondents could not have later assailed their regularisation orders. Consequently, the learned Writ Court erred not only in quashing the regularisation orders but also in directing that the period spent on maternity leave be treated as continuous service for the sole purpose of retrospectively extending the benefits of Circular No. 752 dated 12th March 2021 to them

Arguments:

7. Mr. Raman Sharma, learned Senior Counsel for the appellants, strenuously argued that far from denying maternity leave, the appellants had fully granted the same to the respondents. He urged that the

respondents, having consciously embraced the proportionate extension of their contractual service, could not thereafter be permitted to challenge the impugned conditions. The learned Senior Counsel submitted that the writ petitions ought to have been dismissed by a strict application of the principles of acquiescence, and in aid of this submission, he invoked the judgment of the Hon'ble Supreme Court of India in "*P.S. Gopinathan v. State of Kerala and others*" reported in *AIR 2008 SC 2768*.

8. In reply, the learned Senior Counsel for the respondents strenuously resisted the appeals, canvassing that the two-year contractual tenure was meant solely for the determination of suitability. Once that suitability stood established and culminated in regularisation, any carving out or exclusion of the maternity leave period is entirely unwarranted. The learned Senior Counsel vehemently argued that subtracting the period of such leave forms a classic instance of systemic gender discrimination, effectively penalizing motherhood and violating the core tenets of gender justice.
9. Heard and perused the record.

Discussion/Analysis:

10. It is undisputed that the respondents, like all other newly appointed Banking Associates, were to be regularised only upon the successful completion of a two-year contractual period. While their peers were regularised at the expiry of the two years, the respondents could not be regularised simultaneously owing to their extended absence on account of maternity leave. Crucially, despite the complete absence of any

stipulation for leave within the contract, the appellants acceded to the respondents' requests and sanctioned the same, subject to the condition that their contractual terms would stand proportionately extended. Since the sole objective of the two-year probationary tenure was to evaluate the suitability of the candidates, such an assessment could only be completed upon the actual performance of duties for the full duration of the prescribed period.

11.The respective dates of joining, the periods of maternity leave granted, and the corresponding dates of regularisation in respect of the respondents are tabulated hereunder:

S No.	Name of Respondent	Date of Initial Joining /Regularisation	Period of Maternity leave availed
1.	Tanu Gupta	08.11.2018 10.03.2021	118 days
2.	Basu Magotra	08.11.2018 04.02.2021	83 days
3.	Isha Sudan	06.11.2018 13.05.2021	181 days
4	Bintul Hudda	07.11.2018 05.02.2021	176 days

12.Admittedly, the appellants deemed the respondents suitable for regularisation, giving effect to the same on different dates following the completion of their extended contractual engagements. It is solely due to the exclusion of the maternity leave period, and the attendant extension of their contracts, that their regularisation fell after the crucial cut-off date of 31.12.2020. Consequently, the respondents were subjected to a distinct disadvantage, effectively penalizing them and depriving them of the benefits under the aforementioned Circular,

which would have naturally accrued to them but for their invocation of maternity leave.

13. Article 15 of the Constitution of India forbids discrimination, *inter alia*, on the ground of sex, whereas Article 15(3) carves out a vital enabling provision, authorizing the State to enact special measures for women and children. This is augmented by Article 42, which directs the State to ensure just and humane working conditions alongside maternity relief. To give teeth to this constitutional vision and preserve the dignity of motherhood, Parliament enacted the Maternity Benefit Act, 1961. The statutory substratum of this Act is to ensure that working women are neither forced to labor during advanced pregnancy nor deprived of their livelihoods, thereby securing full remuneration and health security for both mother and child.

14. Article 38 of the Constitution serves as a solemn injunction upon the State to promote the welfare of the people by effectively securing and safeguarding a social order anchored in social, economic, and political justice, which must inform all institutions of national life. In tandem, Article 38(2) mandates a persistent strive to minimize income inequalities and eliminate disparities in status, facilities, and opportunities. This egalitarian vision is reinforced by Article 39, which commands the State to direct its policy towards ensuring that men and women equally enjoy the right to an adequate means of livelihood, that equal pay for equal work is secured for both sexes, and that the vulnerabilities of workers and children are protected against abuse and economic coercion that might force them into unsuitable vocations.

15. In alignment with these constitutional imperatives, the appellants have actively incorporated maternity protections into their service regulations. Clause 30 of the Bipartite Settlement dated 11.11.2020 bears ample testimony to this realization, mandating that regular female employees be granted maternity leave for a duration not exceeding six months per occasion, subject to a maximum ceiling of twelve months during their entire service period.

16. In “*Municipal Corpn. of Delhi v. Female Workers (Muster Roll)*”, (2000) 3 SCC 224, the Hon’ble Apex Court has held as under:

33. A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre-or post-natal period.

(emphasis added)

17. In *Deepika Singh v. Pgimer, Chandigarh*, (2023) 13 SCC 681, the Hon’ble Apex Court has observed as under:

26. Unless a purposive interpretation were to be adopted in the present case, the object and intent of the grant of maternity leave would simply be defeated. The grant of maternity leave under the 1972 Rules is intended to facilitate the continuance of women in the workplace. It is a harsh reality that but for such provisions, many women would be compelled by social circumstances to give up work on the birth of a child, if they are not granted leave and other facilitative measures. No employer can perceive childbirth as detracting from the purpose of employment. Childbirth has to be construed in the

context of employment as a natural incident of life and hence, the provisions for maternity leave must be construed in that perspective.

(emphasis added)

18. The judgment in *Deepika Singh's* case was relied upon with approval by the Hon'ble Supreme Court in *Kavita Yadav v. State (NCT of Delhi)*, (2024) 1 SCC 421.

19. We are firmly of the view that any ambiguity or silence within the rules regulating maternity benefits must be resolved through a lens of beneficial construction. The sole objective of such interpretation must be to advance the cause of the female employee, not to orchestrate her disentitlement. Any interpretation to the contrary would not only defeat the spirit of the beneficial regulations but would also run entirely counter to the mandate of gender justice embodied in Article 15 of the Constitution of India.

20. We find no merit in the appellants' submission that the respondents are precluded from challenging their regularisation dates by application of the 'doctrine of acquiescence'. While acquiescence operates as an equitable shield, it cannot be weaponized to defeat fundamental rights; where a constitutional infraction is manifest, equity must make way for the rule of law.

21. The appellants' plea that a strict, continuous two-year performance evaluation was a condition precedent to regularisation is equally flawed. Once the respondents' suitability stood acknowledged and culminated in regularisation, they could not be placed in a disadvantageous position merely on account of motherhood. Categorizing sanctioned maternity leave as a break in service to deny

them the benefits of the said Circular is discriminatory. In reality, the respondents possessed no equal bargaining power; they were at the absolute mercy of the employer, where any contemporaneous protest against the regularisation terms would have simply resulted in their termination.

22. In this context, it would be apt to take note of the observations made by the Hon’ble Supreme Court in “**Bhola Nath Vs. The State of Jharkhand**” 2026 INSC 99, reported as 2026 SCC Online SC 129, and the relevant paras are extracted as under:

11. At the outset, we find it necessary to express our disapproval of the manner in which the High Court has approached the present lis. **The controversy before the Court was not one of mere acquiescence or implied waiver of rights. The High Court, in our view, has proceeded on a mechanical application of precedents without engaging with the core constitutional issues involved, thereby reducing the dispute to one of acceptance of contractual terms, divorced from its larger constitutional context.**

11.1. This Court has consistently held that the State, being a model employer, is saddled with a heightened obligation in the discharge of its functions. **A model employer is expected to act with high probity, fairness and candour, and bears a social responsibility to treat its employees in a manner that preserves their dignity. The State cannot be permitted to exploit its employees or to take advantage of their vulnerability, helplessness or unequal bargaining position.**

11.2. It therefore follows that the State is required to exercise heightened caution in its role as an employer, the constitutional mandate casting upon it a strict obligation to act as a model employer, an obligation from which no exception can be countenanced.

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11.6. The Constitution Bench in “**Bashesar Nath v. Comm. Income Tax**”, long ago clarified that **fundamental rights guaranteed under the Constitution are incapable of waiver. Consequently, if the action of the respondent-State is found to be violative of Article 14 of the Constitution, the mere fact that the appellants’ engagement was governed by contractual terms and conditions cannot be construed as a waiver of their fundamental rights.**

Unconscionable Agreements- Contract between Lion and Lamb:

12. In “**Central Inland Water Transport Corpn. v. Brojo Nath Ganguly**”, this Court acknowledged the increasing imbalance in the bargaining power of contracting parties. The Court held thus: -

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

Therefore, the Court has held that the Constitution obliges courts to advance social and economic justice and to give effect to the equality mandate under Article 14. Consequently, courts will neither enforce nor hesitate to invalidate contracts, or contractual clauses, that are unfair or unreasonable when entered into between parties with unequal bargaining power.

12.1. Relying on the aforesaid reasoning, another two Judge Bench in “**Pani Ram v. Union of India**”, reiterated that the guarantee of equality under Article 14 extends even to situations where a person has no meaningful choice but to accept imposed contractual terms, however unfair or unreasonable they may be. Applying this principle to the facts before it, the Court observed thus:

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“23. As held by this Court, a right to equality guaranteed under Article 14 of the Constitution of India would also apply to a man who 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. We find that the said observations rightly apply to the facts of the present case. Can it be said that the mighty Union of India and an ordinary soldier, who having fought for the country and retired from Regular Army, seeking re-employment in the Territorial Army, have an equal bargaining power. We are therefore of the considered view that the reliance placed on the said document would also be of no assistance to the case of the respondents.”

Therefore, it is clear that Courts are empowered to invalidate unconscionable elements of a contract where the parties lack the ability to exercise any real or meaningful choice in negotiating its terms. In the present case, the appellants were left with no alternative but to accept the conditions unilaterally prescribed by the respondent-State in order to secure their livelihood and sustain a source of income. It would be entirely unrealistic to assume that, in such circumstances, an employee seeking temporary employment could meaningfully negotiate or assert a position against the overwhelming might of the State machinery.

12.2. At this juncture, the analogy of apples and oranges serves as a useful reminder that certain relationships are inherently incapable of being assessed on an equal plane. A contract between the State and an employee stands on a similar footing. The State, in such a relationship, assumes the role of a metaphorical lion, endowed with overwhelming authority, resources and bargaining strength, whereas the employee, who is yet an aspirant, is

reduced to the position of a metaphorical lamb, possessing little real negotiating power. To suggest parity between the two, i.e. the lion and the lamb, would be to ignore the stark imbalance that defines the relationship. 12.3. Therefore, where a lion contracts with a lamb, the inequality is not incidental but structural, and it is precisely this disproportion that calls for judicial sensitivity. In such situations, the conscience of Constitutional Courts must inevitably tilt in favour of protecting the lamb. We have no hesitation in holding that Constitutional Courts are duty-bound to act to safeguard those who are vulnerable to exploitation, so that employees are not compelled to meekly submit to the demands of a vastly dominant contracting party like the State, but are instead assured that constitutional protections will intervene to prevent such exploitation.”

(emphasis added)

23. The appellant-Bank, a banking behemoth whose vast footprint extends across the length and breadth of India, has regrettably chosen to flex its institutional muscles against its female employees. Rather than accommodating and honoring their motherhood, the Bank has subjected them to hostile discrimination vis-à-vis their peers. Such an overbearing approach by an institution of this stature is entirely impermissible and cannot be countenanced in law.

24. In the case of *Shafakat and others v. Jammu and Kashmir Bank Limited and others*, the learned Single Judge was called upon to adjudicate the legality of the Bank's action in deducting the leave availed of by an employee during their probationary period when computing the seven years of service mandated for a Banking Associate to participate in the promotion process under the seniority-cum-selectivity channel. The learned Single Judge held such deduction to be totally arbitrary and violative of Articles 14 and 16 of the Constitution of India. Although the said judgment was initially assailed by the appellant-Bank in an appeal bearing LPA No. 33/2024, the said appeal was subsequently dismissed as withdrawn in terms of an order dated 26th March, 2025.

Conclusion:

25. We have carefully considered the judgment rendered by the learned Single Judge, which is well-reasoned, pellucid, and entirely in accordance with law. The challenge mounted against the same fails, and consequently, both these appeals stand dismissed.

26. Dismissed.

(Rajnish Oswal)
Judge

(Arun Palli)
Chief Justice

Srinagar

20.05.2026

Ajaz Ahmad, Secy

Whether approved for reporting? Yes

