GAHC030004412019

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/128/2019

Mizoram SSA Teachers Association r/b its President and Anr.
Chaltlang, Aizawl 2: R. Lalrinpuia
Kanan Veng
Aizawl
Mizora

VERSUS

State of Mizoram and 6 Ors.
Aizawl, Mizoram

Advocate for the Petitioner : Mrs. Dinari T Azyu

Advocate for the Respondent : Ms. Mary L. Khiangte

B E F O R E

HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing : 07.02.2023, 08.02.2023 & 09.02.2023

Date of Judgment : 17.03.2023

J U D G M E N T & O R D E R (CAV)

Heard Mrs. Dinari T. Azyu, learned counsel for the petitioners, Ms. Mary L.

Khiangte, learned Govt. Advocate appearing for the State respondents, Mr. Jonathan Lalrintluanga, learned counsel for the respondent No. 6 and Ms. Zairemsangpuii, learned CGC for the respondent No. 7.

[2.] This is the second time the petitioners are before this Court. The petitioner No. 1 is the Mizoram SSA Teachers' Association represented by its President and the petitioner No. 2 is the President of the Association. The earlier writ petition being WP(C) No. 84/2018 was disposed of on 23.04.2019 with a direction to the petitioners to submit a fresh representation before the Secretary to the Govt. of Mizoram, School Education Department (respondent No. 2) through the State Project Director, SSA, Mizoram, Aizawl (respondent No. 6) within a period of 15 days from the date of the Order along with a copy of the writ petition and the respondent No. 6 was further directed to submit a detailed write up as may be necessary to the respondent No. 2 and the respondent No. 2 upon receipt of the same and the representation was directed to dispose of the same by way of a speaking order within a period of 6 (six) weeks from the date of receipt of the same. Pursuant to the direction, the respondent No. 2 vide order dated 24.06.2019 rejected the representation of the petitioners. Aggrieved, the petitioners are again before this Court.

[3.] The case of the petitioners in brief is that the Govt. of India in the Ministry of Human Resource Development, Department of Elementary Education and Literacy introduced a program for Universal Education in India under the 9th Five year plan

with the nomenclature of Sarva Shiksha Abhiyan (SSA) aiming to achieve the long cherished goal of Universalization of Elementary Education through a time bound integrated approach in a partnership with a States to change the face of the Elementary Education to all children in the age group of 6 - 14 years by 2010, focusing emphasis on education for life. The statute mandates the financial resource and responsibility for implementation of the scheme for which sufficient budget was estimated from the Central and the State level department. The financial norms as has been provided initially under the statute is to be shared by the Central and State Government in 85:15 ratio during the 9th plan, 75:25 during the 10th plan and thereafter, 50:50. The financial norms further provide that regarding sharing of cost, undertaking had to be taken from the State Government and as regard support for Teacher salary. The process under the SSA which started during the 9th plan period is a continuous process and would carry on spontaneously.

[4.] The State respondents in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India vide Notification dated 31.07.2001 framed the SSA Rajya Mission Rules, 2001. Subsequently, the Right to Education Act, 2009 (RTE Act) came into being and accordingly, in exercise of the powers conferred by Section 38 of the said Act, the Mizoram Right of Children to Free and Compulsory Education Rules, 2009 (Rules of 2009) was framed by the State respondents vide Notification dated 23.03.2011. According to the petitioners, presently, the SSA Mizoram has opened 499 new schools including Lower Primary and Upper Primary

Schools. There are 550 Lower Primary Teachers and 1643 Upper Primary Teachers.

[5.] It is the case of the petitioners that they were appointed under the aforesaid Scheme through a regular selection process. The respondent authority concerned had floated advertisement for filling up the post by inviting applications from those interested. The members of the petitioner association applied for the posts and on being selected, they were appointed and executed an agreement. According to the petitioners, the members of the petitioner association have been posted in various Government Primary and Middle Schools as well in Deficit Schools and they have rendered more than 20 years of service in their appointed posts. They have also undergone their course at various levels from time to time as prescribed by the concerned authority and they have gained adequate experience.

[6.] It is the apprehension of the members of the petitioner association that if their services are not absorbed by the respondents against the post they are holding or by framing appropriate scheme, they are bound to face grave hardship financially once they have attained the age of superannuation. Reliance has been placed by the petitioners at those Government contract Primary School Teachers whose services have since been regularized by the State Government. The petitioners contend that the contract Primary School Teachers were initially engaged under the Operation Blackboard (OBB), which is a Centrally Sponsored Scheme (CSS). Once the Scheme was discontinued, the services of those Primary School Teachers were continued by engaging them under the SSA. Thereafter, they were absorbed as Government

contract Primary School Teachers. On their absorption, they came to be governed by the Govt. of Mizoram Regularization of Contract Employees Scheme, 2008 (Regularization Scheme of 2008). Thus, in accordance with the said Scheme, their services have been regularized. The petitioners therefore contend that they are also similarly situated and therefore, they are entitled to be considered and be given similar benefits by the State respondents.

[7.] Mrs. Dinary T. Azyu, learned counsel for the petitioners submits that the Parliament upon having regard to the relevant provisions of the Directive Principles of State Policy enumerated in the Constitution of India that the State shall provide free and compulsory education to all children up to the age of 14 years and also having regard to Article 21-A of the Constitution of India which provides for free and compulsory education to all children in the age group of 6 - 14 years as a fundamental right framed the RTE Act. She submits that Section 23 of the RTE provides for the qualification for appointment and terms & conditions of service of Teachers. Section 23 (1) provides that any person possessing such minimum qualification as laid down by an academic authority, authorized by the Central Government, by notification, shall be eligible for appointment as a Teacher. Sub-Section (2) of Section 23 further provides that where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for

appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification. Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of 5 (five) years. Sub-Section (3) of Section 23 provides that the salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed. The learned counsel has also drawn the attention of this Court to Section 38 of the RTE Act which provides that the appropriate Government shall have the power to make Rules. Section 38 (2) (l) provides that the salary and allowances payable to, and the terms and conditions of service of Teacher under Sub-Section (3) of Section 23 may be provided for by the appropriate Government by way of making rules and notifying the same to carry out the provision of the RTE Act. She submits that the Govt. of Mizoram in exercise of the powers conferred by Section 38 of the RTE Act framed the Mizoram Right of Children to Free and Compulsory Education Rules, 2011 (Rules of 2011). Referring to Rule 15 (1) of the Rules of 2011, the learned counsel submits that the minimum qualifications for persons to be eligible for appointment as a Teacher in an Elementary School shall be as per the relevant rules framed by the Government at the time of recruitment. Sub-Rule (2) of Rule 15 further provides that the minimum qualifications as per the relevant Recruitment Rules shall be applicable for every school established, owned and controlled by the State.

[8.] Mrs. Dinari T. Azyu, learned counsel further submits that as per Rule 18 (3)

of the Rules of 2011, the scale of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of Teachers, including those employed for the purpose of imparting special training as specified in Section 4 of the RTE Act shall be the same as that of regular Teachers, and at par for similar work and experience. Mrs. Dinari T. Azyu, learned counsel submits that as per the frame work for implementation of the SSA based on the RTE Act formulated by the Ministry of Human Resource Development, Department of Elementary & Literacy, the national policy on education initiated a wide range of programs for achieving the goal of universal elementary education for strengthening the social fabric of democracy through provisions of equal opportunities to all, various CSS projects such as OBB, Shiksha Karmi Project (SKP) including SSA is being implemented in partnership with the State Governments. As per the frame work, it was acknowledge that currently, SSA is being implemented as India's main program for universalizing elementary education. Its overall goals to include universal access and retention, bridging of gender and social category gaps in education and enhancement of learning levels of children. SSA provides for a variety of intervention, including inter-alia, opening of new schools and alternate schooling facilities, construction of schools and additional classrooms, toilets and drinking water, provisioning for teachers, periodic teacher training and academic resource support, textbooks and support for learning achievement. These provisions need to be aligned with the legally mandated norms and standards and free entitlements mandated by the RTE Act. The learned counsel submits that Clause 1.5

of the frame work for implementation of SSA provides for the RTE road map. The RTE provides a legal enforceable rights frame work with certain unambiguous time targets that Governments must adhere to. For example, the Act mandates that every child in the six to fourteen age group shall have a right to free and compulsory education in a neighbourhood school. The Act also provides that if a school does not exist in an area or limit prescribed as the neighbourhood, the appropriate Government and the local authority shall establish a school in this area within a period of three years. Therefore, all children-girls and boys-children from disadvantaged groups and economically weaker sections, children with special needs, children involved in child labour and so on, must be in a school within three years time starting from 1st April, 2010. This provision in the RTE Act is applicable to the SSA goals on access and universalization of elementary education. She therefore submits that the frame work for implementation of SSA has been made in line with the RTE Act and to fulfill the goal and objective of the said Act. The learned counsel further submits that besides using the services of the members of the petitioner association and they are performing their duties without any break and at par with those regularly appointed under the State Government, the State respondents have not taken any steps for their absorption. On the other hand, the State Government has framed a special scheme for recruitment of Health Workers vide Notification dated 03.05.2017 for filling up the existing 185 vacant posts of by giving special considerations for the Health Workers who have been engaged on contract basis under the CSS for a suitable period of time

in remote areas. As per the Notification, 50% of the existing vacant post are to be filled up from amongst Health Workers who have been engaged continuously without break on contract basis under the CSS implemented by the Health & Family Welfare Department and the remaining 50% vacant posts, they are to be filled up through open advertisement by following procedure prescribed by the DP&AR vide O.M dated 23.08.2012. The learned counsel also submits that a special scheme has been formulated for Staff Nurses for filling up of 70 vacant posts of Staff Nurse under the Mizoram Institute of Medical Education & Research (MIMER), Falkland. The 70 vacant posts are to be filled up from Staff Nurse who have been engaged continuously without break on contract basis as Staff Nurse under the CSS, implemented by the Department of Health & Family Welfare by conducting personal interview only. The principal criteria for selection would be the length of service/seniority as contract Staff Nurse under the CSS.

[9.] The learned counsel also referred to the Communication dated 31.07.2007 (Annexure - 14) written by the Under Secretary to the Govt. of Mizoram, School Education Department to the Director of School Education, Mizoram, Aizawl informing the latter that the Government had approved absorption of 223 Middle School Teachers and 268 High School Teachers (491 in total) formally under CSS but converted into State posts vide No. A.11015/1/2004-EDN dated 18.06.2007. Accordingly, the Director was informed to issue formal appointment order immediately with effect from 01.04.2007 in the Pay Scale as indicated in the said Communication.

Further, the learned counsel submits that vide Communication dated 12.08.2009, the Director of School Education has communicated to all District Education Officers and Sub-Divisional Education Officers that the period of service rendered under the CSS is to be counted as qualifying service for pensionary and leave benefits only but not for increment and others. The learned counsel submits that Primary School Teachers currently are getting a fixed monthly remuneration of Rs. 20,000/- as gross salary while Middle School Teachers are getting Rs. 25,000/-. There is no extra pay for trained Teachers whether it be undergraduate or Graduate Teachers. She submits that as for the regular Teachers under the State Government, they are enjoying a Pay Scale, along with all the admissible allowance and pay increments. Therefore, there is gross discrimination amongst the two sets of Teachers, who otherwise are performing similar nature of duties and functions. The learned counsel therefore submits that the respondent authorities may be directed to formulate an appropriate scheme for the purpose of absorbing the services of the petitioners as has been done in respect of other similarly situated employees. Mrs. Dinari T. Azyu in support of her submissions has relied upon the following authorities:

(1) Judgment dated 23.02.2021 of High Court of Tripura (D.B) passed in WP(C) No. 329/2015 and WP(C) No. 212/2016 (Sh. Sajal Deb -Vs- State of Tripura & Others).

(2) State of Haryana & Others -Vs- Piara Singh & Others, (1992) 4 SCC 118.

(3) State of Punjab & Others -Vs- Jagjit Singh & Others, (2017) 1 SCC 148.

(4) Narendra Kumar Tiwari -Vs- State of Jharkhand & Others, (2018) 8 SCC 238.

(5) State of Karnataka & Others -Vs- M.L. Kesari & Others, (2010) 9 SCC 247.

(6) Kamrup District Siksha Sarathi (I) Association & Another -Vs- State of Assam & Others, 2017 (5) GLT (F.B) 188.

[10.] Ms. Mary L. Khiangte, learned Govt. Advocate appearing for the State respondents on the other hand submits that as per the advertisement, the engagement of SSA Teachers was only for the period of 2009 academic session and it was clearly indicated that they will not be allowed to claim regularization. Their respective appointment orders also clearly provided that the engagement is only on temporary and contract basis and will not bestow any right for claiming regular appointment. Further, the Teachers engaged under the SSA were required to execute an agreement bond before joining their duties. Despite their initial engagement for the academic session of 2009, their services have been continued from time to time by assigning of fresh agreement. This however does not bestow any right upon the petitioners to claim regularization. She submits that the case of the present petitioners is not similar with the case of *Sh. Sajal Deb* (supra) cited by the learned counsel for the petitioners. Unlike the referred case, the present petitioners were not recruited as per the relevant recruitment rules of the Department concerned. She submits that the

only mode of recruitment to Primary and Middle School Teachers is either through direct recruitment by the Mizoram Public Service Commission (MPSC) or by Regularization of Contractual Employees as per the Regularization Scheme of 2008. Since the petitioners are not included under the said Scheme, their services cannot be regularized. The learned Govt. Advocate further submits that the OBB Scheme and the SSA are completely different. The salaries of the Teachers appointed under the OBB Scheme were met from the fund provided by the CSS. When the Central Government was not in a position to finance the salaries of the Teachers under the OBB Scheme, the fund from the SSA was utilized. However, this does not mean that the OBB Teachers were appointed under the SSA Scheme and they still remain as a separate group. The Teachers recruited under the OBB Scheme was against sanctioned post and their services were treated as contractual service. Therefore, their services were accordingly regularized under the Regularization Scheme of 2008.

[11.] The learned Govt. Advocate also submits that the status of the petitioners and the Hindi Teachers are entirely different and they cannot be in the same category. She further submits that as per the Rules of 2011, more particularly, Rule 15 (1) and (2), the minimum qualification prescribed for persons to be eligible to be appointed as Teacher in an Elementary School is to be as per the relevant Recruitment Rules framed by the State Government. She submits that as per Rule 18 (1) of the Rules of 2011, the State Government is required to notify the terms and conditions of service and salary and allowance of Teachers of Government Schools in order to create a

professional and permanent cadre of Teachers. Provided that the terms and conditions of service of Teachers of Government aided Schools is to be notified separately by the Government. The members of the petitioner association in the present case were not appointed as per the Recruitment Rules but as per the advertisement notified for such appointment. As such, they cannot claim regularization as a matter of right.

[12.] The learned Govt. Advocate submits that reliance upon Court's decision should not simply be made without discussing as to how the factual situation fits in with the fact situation of the decision relied upon. The petitioners have only made their claim to be similarly situated with the contractual employees who were earlier appointed under the OBB Scheme without elaborating as to how they are similar and therefore, their claim for similar benefit cannot be accepted. In this regard, she relies upon the case of *Bharat Petroleum Corporation Ltd. & Another -Vs- N.R. Vairamani & Another, (2004) 8 SCC 579.* She further submits that the petitioners cannot place reliance upon the case of *State of Karnataka & Others -Vs- M.L. Kesari & Others* (supra) inasmuch as, they are not working against a duly sanctioned post unlike the Teachers appointed under the OBB Scheme. The learned Govt. Advocate further relies upon the case of *Union of India & Others -Vs- Pradip Kumar Dey, (2000) 8 SCC 580* to contend that there can be no parity in pay when the method of recruitment is not similar. By also relying upon the case of *State of Haryana & Another -Vs- Haryana Civil Secretariat Personal Staff Association, (2002) 6 SCC 72*, she submits that against the claim for pay parity, the financial constraint of the Government is one of the relevant

and acceptable factor. The learned Govt. Advocate also relies upon the case of *Union of India & Others -Vs- Ilmo Devi & Another, 2021 SCC Online SC 899* and submits that the High Court in exercise of the powers under Article 226 of the Constitution of India cannot direct the Government and or Department to formulate a particular regularization policy. Framing of any scheme is not the function of the Court and is the sole prerogative of the Government. Moreover, mere continuation of service by a temporary or ad-hoc or daily wage employee, under the cover of some interim orders of the Court would not confer upon the person concerned, the right to be absorbed in service. Sympathy and sentiment cannot be the ground for passing any order of regularization in the absence of a legal right. She thus submits that under the facts and circumstances of the case, the writ petition should be dismissed.

[13.] Mr. Jonathan Lalrintluanga, learned counsel appearing for the respondent No. 6 submits that in case of those Teachers appointed under the OBB Scheme, they were appointed against a sanctioned post unlike the members of the petitioner association who were temporarily engaged under the SSA on contract basis and on a fixed salary. He submits that the case of *State of Karnataka & Others -Vs- M.L. Kesari & Others* (supra) was regarding regularization of those employees who were working in a sanctioned post. The learned counsel submits that the SSA Teachers otherwise have the opportunity to appear and sit for the regular recruitment of Teachers. In this regard, he refers to the advertisement dated 12.05.2014, published by the MPSC inviting applications from those interested for appointment to 67 vacant posts of

Primary School Teacher. Therefore, the petitioners cannot claim that they have no opportunity for being considered for appointment against regular posts under the State Government. Mr. Jonathan Lalrintluanga, learned counsel by referring to the case of *Sh. Sajal Deb* (supra) submits that in respect of State of Tripura and Delhi Government, they are capable of paying unlike the State of Mizoram. He also submits that as per the Apex Court decision in *Union of India & Others -Vs- Ilmo Devi & Another* (supra) as relied upon by the learned Govt. Advocate, the High Court cannot direct the Government to formulate a particular policy in a particular manner. He submits that additional fund is required for the salaries of Teachers appointed under the SSA, which was then provided by the State Government. The State Government has also not remain indifferent to the welfare of the Teachers working under the SSA and accordingly, vide Notification dated 06.09.2022, Dearness Allowance, Medical Allowance, Additional Allowance etc., has been granted to the employees of Samagra Shiksha.

[14.] Ms. Zairemsangpuii, learned CGC appearing for the respondent No. 7 by relying upon the affidavit-in-opposition filed by the respondent No. 7 on 11.05.2022 submits that SSA, Rashtriya Madhyamik Shiksha Abhiyan (RMSA) and CSS on Teacher education have been subsumed into a single integrated Scheme for School Education called Samagra Shiksha. The same has been approved by the Cabinet on 18.03.2018 and has come into force with effect from 01.04.2018. Therefore, an analysis of the Scheme of the Act would go to show that the recruitment, regularization, salary,

transfer of Teachers and their retention are primarily in the domain of their respective State Governments and Union Territory (U.T) administrations. Under the Samagra Shiksha, ceiling limits for support for Teacher salaries have been laid down to maintain uniformity in Central support for all States/U.Ts and provide fund for quality enhancement. Thus, while the Teachers will continue to be governed by the terms and conditions of the respective States/U.Ts, the support under the Samagra Shiksha would be the same across all the States and U.Ts. She submits that as per the Department's letter dated 15.11.2017, it was decided that the burden of salary of Teachers sanctioned under SSA to the tune of Teacher vacancies under State sector would be shifted to the State Government and will not be funded anymore under the Central share of SSA. Therefore, the recruitment of Teachers, their regularization and service conditions and also their deployment are primarily in the domain of the State Government or the U.T Government and therefore, the Ministry has no part to play in this regard.

[15.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. It is the case of the petitioners that they were appointed under the SSA Scheme through regular selection process. The respondent authority concerned had floated advertisement for filling up the posts by inviting applications from those interested. The members of the petitioner association applied for the posts and on being selected, they were appointed and executed an agreement. The members of the petitioner association are posted in

various Government Primary and Middle Schools and also Deficit Schools and they have rendered more than 20 years of service in their appointed posts. They have also undergone training course at various levels from time to time as prescribed by the concerned authority and they have gained adequate experience. That in terms of their initial appointment, they continue to enjoy only fixed pay and not pay scale like those who are employed in the Education Department under the State Government. As may be noticed, the Directive Principles of State Policy contained in Part-IV of the Constitution of India provides that the State shall endeavor to provide early childhood care and education for all children until they complete the age of six (6) years. Further, Article 21A of the Constitution provides that the State shall provide free and compulsory education to all children of the age of 6 - 14 years in such manner as the State may, by law, determine. Accordingly, Parliament to carry out the mandate of the Constitution, enacted the RTE Act. Section 7 of the RTE Act provides for sharing of financial and other responsibilities between the Central and the State Governments. Section 7 of the RTE Act may be abstracted here under for ready perusal:-

"***7. Sharing of financial and other responsibilities****.—(1) The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.*

(2) The Central Government shall prepare the estimates of capital and recurring expenditure for the implementation of the provisions of the Act.

(3) The Central Government shall provide to the State Governments, as grants-in-aid of revenues, such percentage of expenditure referred to in sub-section (2) as it may determine, from time to time, in consultation with the State Governments.

(4) The Central Government may make a request to the President to make a reference to the Finance Commission under sub-clause (d) of clause (3) of article 280 to examine the need for additional resources to be provided to any State Government so that the said State Government may provide its share of funds for carrying out the provisions of the Act.

(5) Notwithstanding anything contained in sub-section (4), the State Government shall, taking into consideration the sums provided by the Central Government to a State Government under sub-section (3), and its other resources, be responsible to provide funds for implementation of the provisions of the Act.

(6) The Central Government shall— (a) develop a framework of national curriculum with the help of academic authority specified under section 29;

(b) develop and enforce standards for training of teachers;

(c) provide technical support and resources to the State Government for promoting innovations, researches, planning and capacity building."

[16.] From the above abstract, it may be seen that the provision seeks to provide for financial and other responsibilities of the Central Government and the State Governments and for developing by the Central Government of a national curriculum and the standards for training of Teachers. In other words, the role of the Central Government and the State Governments in so far as financial and other responsibilities are concerned has been clearly laid down under this Section. Section 8 of the RTE ACT pertains to duties of appropriate Government which requires that the appropriate Government shall, inter-alia, provide free and compulsory education to every children and ensure availability of a neighborhood School, provide infrastructure including School building, Teaching staff and learning equipments and ensure good quality of Elementary Education conforming to the standards and norms specified in

the Schedule. Section 23 of the RTE Act provides for qualification for appointment and terms and conditions of service of Teachers. The same has already been stated at paragraph No. 7 of this Judgment and therefore, the same is not being repeated for brevity.

[17.] In exercise of the powers conferred by Section 38 of the RTE Act, the Govt. of Mizoram framed the Rules of 2011. Sub-Rule (1) of Rule 15 provides for the minimum qualifications of persons to be eligible for appointment as Teacher in an Elementary education and shall be as per the relevant Rules framed by the Government from time to time. Sub-Rule (2) of Rule 15 further provides that minimum qualification as per the relevant Recruitment Rules shall be applicable for every School established, owned and controlled by the State. Sub-Rule (3) of Rule 15 provides that the scale of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of Teacher, including those employed for the purpose of imparting special training as specified in Section 4 of the RTE Act shall be the same as that of regular Teachers and at par have similar work and experience. It is an admitted position that SSA is being implemented on the basis of the frame work prepared based on the RTE Act, its scope and intent. From a perusal of the frame work for implementation of SSA, it is seen that SSA is being implemented as India's main programme for universalizing Elementary education with goals of achieving universal access and retention, breaching of gender and social category gaps in education and enhancement of learning levels of children. The members of the

petitioner association admittedly has been rendering their services on being selected and appointed under the SSA for over 20 years. However, they are continued to be paid fixed remuneration and not scale of pay. A similar issue came up for consideration for the Division Bench of the High Court of Tripura in the case of *Sajal Deb* (supra). The petitioners in that case were also engaged as Teachers in Government Schools under the SSA on contractual basis with their period of engagement ranging from 2004 to 2010. As contractual Teachers, they were paid fixed remuneration without any other attendant service benefits despite similarities in qualifications, experience and nature of work and duties as regular Government Teachers. Reply of the Government of India against the writ petition was that the entire issue has to be dealt with by the State Government. The reply of the State Government was that the petitioners were engaged under a Scheme framed by the Central Government and there was no sanctioned post on which they can be regularized. The Government is also unable to bear the financial burden if the Teachers are regularized or even paid salary as per the regular scales. The further apprehension of the State Government was that the burden will entirely fall upon the State Government if the Scheme was withdrawn. It was also contended that many of the Teachers were not qualified as they did not pass the Teachers Eligibility TEST (TET) while it was the claim of the Teachers that they had indeed passed Diploma in Elementary education during the relevant time when the National Council for Teachers Education (NCTE) had recognized such Certificate to be equivalent to TET Certificate. The Division Bench after appreciating the scope, the

intent and the relevant provisions of the RTE Act, which was framed in line with the mandate of the Constitution of India as provided in the Part - III & IV of the Constitution of India and also various decisions rendered by the Supreme Court as well as the High Courts, concluded that the petitioners must receive the remuneration in the regular Scale of Pay assigned to Primary/Upper Primary Government Teachers. As the State Government has the policy that initial appointment of a Teacher will be on fixed pay for five (5) years, the same rule should apply to the present case. In other words, once the petitioners completed five (5) years of service, they should be placed in the regular corresponding Scale of Pay of Government Teachers and such fixation will be for notional purpose from the appropriate date till the date of the judgment. The actual salary would be paid effective from the date of judgment. Further, the petitioners would have the right to be regularized after 10 years of continuous and uninterrupted engagement from initial appointment. It would be up to the Government to consider them for regularization either in the exiting vacant post of permanent Teachers or to sanction new posts as SSA Teachers by creating such cadre, if so advised. It was also open for the Government to frame a Scheme providing for further terms and conditions on which such regularization shall be done. The Division Bench also directed that the judgment would act as a judgment in rem and will apply to all similarly situated SSA Teachers without any of them having to approach the Court separately.

[18.] In coming to the above conclusion, the Division Bench in *Sajal Deb*

(supra) made an in depth analysis of the claims made by the petitioner vis-à-vis the stand taken by the State Government as well as the Union of India. Paragraph Nos. 39 to 52 of the said judgment may be gainfully abstracted herein below:-

"*39. Before we go further we may notice that the provisions noted above, not only refer to providing free and compulsory education, also refer to quality education and which would be the duty and responsibility of the appropriate Government or the local authority, as the case may be. The quality of education is thus inbuilt in a guarantee of free and compulsory education up to the age of 14 years. This guarantee is manifested in number of ways under the RTE Act and is not confined to a mere policy declaration of the legislature. The Act provides for admission of every child in a neighbourhood school. It provides for levying of no fees or charges which would prevent the child from pursuing the education. It provides for creation of sufficient infrastructure including preparing sufficient number of trained teachers for imparting education. It requires that a student admitted should not drop out and also provides that the education to be imparted to such children would be of desired quality.*

40. These lofty ideas and concepts echo and find resonance in the SSA framework for implementation, relevant portions of which we have reproduced in the earlier portion of the judgment. As noted, in this document it has been stated that the scheme is not confined simply to norms for providing teachers or classrooms, but encompass the vision and approach to elementary education as evidenced in shift to child entitlements and quality elementary education in regular schools. In chapter-2 of the said document titled as "All Children in School", it is emphasised that equality will be seen as an integral part

of the agenda on improving quality and will, therefore, encompass not just looking at issues pertaining to teacher training and education, curriculum, language, educational planning and management. Elaborating these aspects, it is further stated that equality in SSA would, therefore, mean focus on addressing exclusion of girls and children belonging to Scheduled Castes, Scheduled Tribes and Muslim communities who constitute the bulk of excluded children in the country. It will also refer to a new category of excluded children-those living in areas affected by civil strife, children affected from migration, urban deprived children, homeless children, children in remote and sparsely populated habitations. It will also mean including gender and other equity issues within the quality goal. This vision document thus emphasises not only free and compulsory education for all children but also focuses on vulnerable groups where dropout rates of a child even though once admitted is extremely high. Contents of this document would show that the special attention is to be given to children belonging to Scheduled Castes, Scheduled Tribes and minority communities as well as girl child. For such purpose, the schools are required to maintain sufficient number of teachers where the vacancy should not exceed 10% of the posts.

41. If these are the concepts flowing from the constitutional amendment, the statutory framework, the vision of the Government of India and the understanding of the right to education by the Courts in various decisions noted above, can it be stated that right to education can be divested from the concept of quality education? The question is rhetorical and the answer obviously is in the negative. One cannot have a right to education without such education being imparted is of desired quality. Mere going

through the motions of imparting education does not amount to fulfilling the guarantee of free and compulsory education. The philosophy appears to us is that the quality education should not be a monopoly of children of rich parents. The responsibility of the state to provide quality education is thus embedded in the right to education guaranteed under Article 21-A of the Constitution and is integral part of RTE Act.

42. If that be so, immediate question that would arise is, should the teachers who have a pivotal role to play in imparting such education and fulfilling the nation"s obligation of free and compulsory education to every child, can be kept on tenterhooks for years together, without proper salary and other service conditions which can guarantee at least a semblance of security? When a teacher employed in such schools has to play an important role not in formal education and in classroom teaching but is also expected to ensure providing proper atmosphere and suitable conditions where students belonging to vulnerable groups such as, Scheduled Castes, Scheduled Tribes, minorities and girl students are not forced to drop out before completing primary education, is it impossible to expect the teacher to perform such a role successfully if his or her own needs and requirements of the most basic level are not satisfied? An unhappy teacher can never perform the task of motivating the child into completing education against all odds. To summarise, quality education is a part and parcel of right to education and a basic quality in education cannot be achieved without satisfying the basic needs of the person who is entrusted with this task.

43. Poor working condition for teachers is an anathema to the principle of quality primary education for all. The vision document of Government of India also takes note of the fact

that poor service conditions of teachers is one of the prime causes of poor quality in Government schools. In chapter-2 referring to contract teachers it is noted that recruitment of contract teachers, i.e. teachers whose pay and service conditions are substantially adverse vis-à-vis the regular teachers has been a matter of great concern. Low salary and insecurity of tenure are features of the system of appointment of contract teachers and are regarded as disincentives for talented persons to join the teaching profession. Thereafter, after referring to Section 23(3) of the RTE Act which provides that salary and service conditions of teachers will be as prescribed by the appropriate Government it is observed that, given the anomalies that the system of contract teachers creates in teaching profession, and thereby on quality of teaching, ***"States would be well advised to prescribe uniform salary and service conditions for teachers, as also take steps to create an environment for (a) attracting the most talented in teaching profession; (b) improving recruitment policies; and (c) exploring possibilities for improving career structures for teachers."*** *In the said portion thereafter comparison is made with situation in other countries with respect to the Governments spending on education as proportion to its per capita Gross Domestic Product. In order to make a point that insufficient spending by Governments in education is a cause for poor quality of teaching. Further, as noted in a letter dated 04.03.2013 from the Ministry of Human Resource Development, Government of India to the State Project Director, Chandigarh, it is stated that the support to the States for additional teachers (SSA teachers) and teachers" salary is thus given at the same scale and service conditions as the teaching cadre of the State. It was pointed out that in the State of*

Punjab a separate SSA cadre of contractual teachers has been created for whom different service arrangements have been made and they are posted only in SSA schools which was disapproved. If the State wishes to fulfil the constitutional goal of quality and free primary education, it cannot shy away from its responsibility of providing proper service conditions to the teachers who are entrusted with this delicate task.

44. The question has another element namely that of discrimination and breach of the principle of equal pay for equal work. We have noticed that SSA teachers are entrusted with the same educational responsibilities, teaching in the same schools to the same students for the same amount of time as regular Government teachers are. Assuming for the moment that they also hold the requisite and, therefore, same qualifications as their counterparts in the Government, in our opinion, thereafter it is simply not open for the administration to treat the two classes of teachers differently at least when it comes to their remuneration. The principle of equal pay for equal work must kick in. In this context, it is not necessary to refer to long line of judgments of the Supreme Court, suffice to refer to the judgment in case of ***State of Punjab and others vrs. Jagjit Singh and others*** *reported in* ***(2017) 1 SCC 148*** *in which after referring to almost all previous judgments on the point, it was observed as under:*

> *"58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to*

work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation."

45. With this background, we may deal with the three objections of the Government. The first objection was that the petitioners are contractual employees. There are no sanctioned posts on which they can be regularised. In any case, a contractual employee has no right of regularisation. This objection of the Government has two or three elements. Firstly, as an authority empowered to create posts, the state cannot argue before the Court that because the posts are not created, there can be no order for regularisation. Creation of a post of course has the elements of budgetary considerations and expediency, but above all it depends on the perennial nature of the work. If the work is of perennial nature and if the Government also has undertaken the work and not decided to outsource it in a legal manner if so permissible, can the Government turn around and argue 20 years later that because the Government has not sanctioned the post, the person who is discharging the duties for two decades and more, must continue to do so on contractual relations? In case of ***State of Haryana and others vrs. Piara Singh and others*** *reported in* ***(1992) 4 SCC 118*** *the Supreme*

Court had observed that long continuous service gives rise to a presumption about need for a regular post. Such presumption of course would not arise on a mere continuous continuation for a year or so. In the said case, continuation of ad-hoc teachers for couple of years was found sufficient to justify creation of posts. We are conscious that many developments have taken place after the Supreme Court rendered the said judgment in case of ***Piara Singh*** *(supra). However, the very fundamental concept of long uninterrupted service against the normal regular requirements of the Governmental functions, can always be seen as a strong indicator of the requirement of creation of posts. Even in the Constitution Bench judgment in case of* ***Secretary, State of Karnataka and others vrs. Umadevi (3) and others*** *reported in* ***(2006) 4 SCC 1****, the period of 10 years is recognised to be long enough to warrant consideration for regularisation of employees whose initial engagement is irregular but not illegal and who have continued in service without the intervention of the orders of the Courts. In case of* ***Narendra Kumar Tiwari and others vrs. State of Jharkhand and others*** *reported in* ***(2018) 8 SCC 238*** *the Supreme Court referring to the decision in case of* ***Umadevi*** *(supra), strongly deprecated the action of the State of Jharkhand in continuing irregular appointments for almost a decade after the decision in the case of* ***Umadevi*** *(supra) observing that this was nothing but exploitation of the employees concerned. It was eventually provided that in cases where the employees had completed 10 years of service on the date of promulgation of the rules, they should be regularised. This coupled with the fact that the petitioners are not engaged in a routine clerical work but for the work which is of most important nature, of not only shaping the whole future generation but*

also fulfilling the obligation of a free and compulsory education. We must draw line where the Government"s stand that no matter how long the tenure of contractual employment, unless and until the Government formally recognises the need of creation of the posts and sanctions such posts, the incumbent has no right to expect regularisation. This objection of the Government subject to certain safeguards we shall provide hereafter must be rejected.

46. The second objection of the Government was that of budgetary constraints. To a large extent, this is a misnomer. We have perused the terms of SSA scheme as well as correspondence between the Union of India and State Governments including the Government of Tripura. On the basis of such materials what emerges is that expenditure for the teachers under SSA would be borne 90% by the Central Government and only 10% burden falls on the State Government. Further, these SSA teachers are meant to augment the capability of the State Government which would require large number of teachers for fulfilling the obligation of free and compulsory education to every child. The Central Government has nowhere provided that such teachers must be retained on fixed salary basis or they may not be regularised ever. In fact, the Central Government has always shown willingness to make budgetary provisions for the number of teachers engaged by the State Government under SSA, on the basis of the pay structure adopted by the State Government. If, therefore, the State Government were to offer regular scales to these teachers, we do not find that the Union of India would have objected and resiled from its responsibility to meet with 90% of such expenditure. This would require one rider by way of clarification. The intention of the Central Government is not to permit

the State Governments to divert its responsibilities of providing sufficient number of teachers to the extent of sanctioned regular cadre strength as can be seen from a letter dated 15.11.2017 by the Ministry of Human Resource Development, Government of India written to Secretary, Education of all States and Union Territories, several major issues which were critical in planning for the Annual Work Plan and Budget exercise of SSA for the year 2018-19, were discussed and highlighted. In paragraph-VII of this letter under the heading "Teacher salary and deployment" it is stated as under:

> *"The Department has been emphasizing to the States during the PAB meetings that States should fill up the State vacancies first before filling up the posts under SSA. Teachers" salary, equivalent to vacant state cadre posts, was deducted in the past for Odisha and Chhattisgarh in 2014-15. Accordingly, it has been decided that, salary of teachers sanctioned under SSA to the tune of teacher vacancies in the State sector will be shifted to State and will not be funded under SSA."*

47. Thus, the Union of India has conveyed to the State Governments that if the regular posts of Government teachers are vacant, to that extent the Central Government would not fund the SSA teachers. The intention is clear. If the State Government has certain number of sanctioned posts for teachers, it is presumed that the Government has not only the requirement but also made budgetary provision for filling up such posts. If the State Government does not fill up such posts but continues to draw from the Central Government funds for paying SSA teachers, Union of India would not accept such a formula. To therefore, contend that by providing regular scales or regularising the

services of these teachers, the State Government would have to carry huge financial burden is not correct. The apprehension repeatedly voiced in the affidavits that if the scheme were to be withdrawn or cancelled by the Central Government, the State Government would be left with a burden of sustaining these teachers, is also a matter of imagination. If the scheme in the most unlikely scenario is to be withdrawn, surely all sanctioned posts would be abolished and budgetary allocation withdrawn. In such unlikely scenario, there is nothing under the scheme or under the law which would require the Government to continue to sustain such teachers in the Government service. It is always open for the Government to sanction sufficient number of posts in regular pay scales as special SSA teachers, continuation on such posts would depend upon continuation of the scheme itself.

48. Even otherwise neither the State Government nor the Central Government can cite insufficiency of funds in order to violate the fundamental right of free and compulsory education enshrined under Article 21 of the Constitution. Particularly, so far the State is concerned, as noted, sub-section (3) of Section 7 of the RTE Act provides that the Central Government shall provide to the State Governments as grants-in-aid of revenues, such percentage of expenditure as it may determine from time to time in consultation with the State Governments. As per sub-section (4) of Section 7 the Central Government can also make a presidential reference to the Finance Commission in terms of Article 280 to examine the need for additional resources to be provided to any State Government so that the State Government may provide its share of funds for carrying out the provisions of the Act. We also notice that sub-section (3) of Section 23 of the RTE Act provides that

the salary and allowances payable to and the terms and conditions of service of teachers shall be such as may be prescribed. In exercise of rule making powers under the RTE Act, the Union of India has framed the Right of Children to Free and Compulsory Education Rules, 2010. Rule 20 of the said rules pertains to salary and allowances and conditions of service of teachers and reads as under:

> *"**20. Salary and allowances and conditions of service of teachers**.-(1) The Central Government or the appropriate Government or the local authority, as the case may be, shall notify terms and conditions of service and salary and allowances of teacher of schools owned and managed by them in order to create a professional and permanent cadre of teachers.*
>
> *(2) In particular and without prejudice to sub-rule (1), the terms and conditions of service shall take into account the following, namely-*
>
> *(a) accountability of teachers to the School Management Committee;*
>
> *(b) provisions enabling long term stake of teachers in the teaching profession.*
>
> *(3) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund, and other prescribed benefits of teachers shall be at par for similar qualification, work and experience."*

Under sub-rule (1) of Rule 20 thus the appropriate Government or the local authority has to notify terms and conditions of service and salary and allowances of teachers of schools owned and managed by them, "in order to create a professional and permanent cadre of teachers". Sub-rule (2) of Rule 20 further provides that in particular the terms and conditions of service shall take into account (a) accountability of teachers to the School Management Committee; and (b) provisions enabling long term stake of teachers in

teaching profession. Sub-rule (3) of Rule 20 further provides that the scales of pay and allowances and other conditions such as, medical facilities, pension and gratuity etc. of such teachers shall be at par for similar qualification, work and experience. Engaging teachers on purely ad-hoc and contractual basis at fixed remuneration which is very below the regular scales, destroys the very purpose of framing Rule 20 of the said rules. This rule in different ways manifests an intention on part of the rule making authority to ensure that fair and equitable service conditions are made available to these teachers so that a professional and permanent cadre of teachers is created who are accountable to the school management and have a long term stake in the teaching profession. It also provides for pay scales and other service conditions at par with other teachers having similar qualifications and work experience. By keeping these SSA teachers on contractual engagement for years together, paying them fix salary which may be unilaterally determined by the authorities, the Government is trampling upon every element of fair wages and service conditions provided in Rule 20 of the said Rules. There is thus a clear disconnect between the legislative policy and executive action.

49. Coming to the last of the Government"s objection regarding qualification of the teachers, to begin with we are not inclined to go into individual qualifications held by every teacher which of course would be a subject matter for the Government to examine. We only propose to clear certain legal issues. If we understand correctly the objection raised by the Government is that they do not possess TET pass certificate. The petitioners have pointed out that they have all cleared D.El.Ed. Examinations successfully and for which they have been granted certificates by the recognised institutions. The petitioners

contend that on account of insufficient number of teachers and insufficient number of institutions to impart teachers" training to such unqualified teachers in the State, the NCTE had published notifications extending the time for completion of in-service teachers training and also provided that the D.El.Ed. Course would be equivalent to the TET course provided it is obtained within certain time period. All these aspects were examined by the Single Judge of this Court in case of ***Sri Snehangshu Das and others vrs. The State of Tripura and others*** *in* ***WP(C) No.89 of 2020*** *and connected petitions in a judgment dated 18.12.2020 in which it was observed as under:*

> *"18. Similarly the objection of the petitioners not possessing requisite educational qualifications is also for two reasons not a valid objection. Firstly, the Government itself was the recruiting agency. The Government had prescribed minimum qualifications in the recruitment rules. These qualifications were published in the recruitment notification. It is not the case of the respondents that any of the petitioners did not possess these qualifications. Several years later the Government cannot raise the legality about the recruitments on the ground that these petitioners did not possess the educational qualifications prescribed by NCTE. In any case, this objection on merits also is not sustainable. We have noticed that as per the Government the qualifications prescribed in the recruitment rules were amended in the year 2016 and 2019 to be in tune with NCTE regulations of 2014, the minimum requirement being a graduation or post graduation from recognized university with at least 50% marks in either of the two degrees and Bachelor of Education from*

National Council for Teacher"s Education recognized institution. These amendments which were made in the year 2016 and 2019 obviously cannot apply to recruitments which were made in the year 2012. It is true that the NCTE notification of 2001 provided the minimum educational qualification of graduation with B.Ed. or equivalent for a teacher. However, as correctly pointed out by Mr. Somik Deb, under a notification dated 18.06.2012 the Government of India, looking to the serious shortage of trained teachers in the State had given exemption from such additional qualification for appointment of a teacher. This notification took into account the proposal of the Government of Tripura for relaxation of the requirement of minimum qualifications for appointment as teachers as provided under sub-section (2) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009. This relaxation was granted up to 31.03.2015 subject to certain conditions including the condition that the State Government shall take all steps to increase the institutional capacity for preparing persons with qualifications to ensure that only qualified persons are appointed as teachers after 31.03.2015. This exemption was thereafter extended. By a further memorandum dated 19.08.2017 it was provided that those teachers who were already engaged shall also acquire the qualifications of a trained teacher as prescribed by NCTE within the stipulated time of 31.03.2019. Since there was a severe shortage of seats as compared to the aspirants, the existing teachers who may wish to have their

qualifications regularized, the Government of India in the said notification also recognized certain online courses through which the qualifications could be obtained. Relevant portion of this notification reads as under:

> ***"All in-service untrained teachers (Govt., Govt. Aided and Private Schools) shall acquire the minimum qualification required under the RTE Act, 2009 within the extended period till 31/03/2019 through the ODL Programme of NIOS except those who have already enrolled in IGNOU during July 2017 session."***

19. In ***WP(C) No.87 of 2020*** *and connected petitions in case of* ***Sri Raju Nama and others vrs. The State of Tripura and others*** *reported in* ***(2020) 1 TLR 725*** *this Court had occasion to examine the equivalence of Online Distance Learning Programmes through NIOS for the purpose of qualifications for trained teacher. The Court held and observed as under:*

"19. In the anticipation that the petitioners will acquire the minimum qualifications of D.El.Ed. certificate, they were allowed to undertake the T-TET course. They have duly completed the D.El.Ed certificate course. They must therefore be allowed to enjoy the fruits of their having cleared the T-TET examination also. The State Government must issue a necessary certificate in this respect. The objection of the State Government that the basic qualification of D.El.Ed. pass was obtained by

the petitioners from an institute which offered the course over duration of 18 months instead of 24 months envisaged as per the Regulations, is overruled.

20. In the result, petitions are allowed. The respondents shall accept the petitioners" certificate of D.El.Ed. pass from NIOS (ODL programme) as valid for all purposes including for the purpose of undertaking TET examination. Necessary certificate of T-TET clearance would be issued to them if they have passed the examination. This shall be done within a period of 4 (four) weeks from today.

Pending application(s), if any, also stands disposed of."

Distance learning course offered by IGNOU stands on the same footing as one offered by NIOS. I am informed that all the petitioners have obtained the qualification through distance learning course offered by IGNOU/NIOS.

This objection of the respondents also, therefore, is turned down."

50. There is yet another aspect of the matter. If as contended by the respondents, majority of these teachers are untrained and unqualified, the question is, what are they doing educating our young children. Should they not have been replaced by qualified trained teachers? Surely, a person cannot be continued as a teacher for several years though his not trained to teach. Lack of qualification is thus selectively sited, not for continuing the teachers' engagement but for not paying full wages.

51. Similar issues have come up for consideration before various High Courts. We would refer only to some of these judgments which are cited by the counsel for the petitioners.

A Full Bench of Gauhati High Court in case of ***Kamrup District Siksha Sarathi (I) Association & others vrs. State of Assam & others*** *in* ***WP(C) No. 5002 of 2012*** *in a decision dated 26.10.2017 considered the demand of Siksha Sarathis of the Government schools for a direction to the authorities to formulate a scheme for absorption on regular posts. The Court held and observed as under:*

> *"**42.** Reverting back to the case of Siksha Sarathi, we find that notwithstanding their initial engagement for 11 months, their engagements have continued for more than a decade now; as a matter of fact, their engagement is now in the second decade, which clearly indicates the necessity and utility of Siksha Sarathis as assistants to the teachers.*
>
> ***43.** In the recent decision in the case of* ***State of Assam Vs. Sri Upen Das*** *,* ***WA No.45/2014****, decided on 08.06.2017, a Division Bench of this Court was examining claim of the respondents who were muster roll workers, work charged workers and casual workers to regularisation of service with consequential benefits, such as, pension etc.. Learned Single Judge had directed the State to consider regularisation of the services of the respondents in terms of Cabinet decision taken on 22.07.2005 by framing an appropriate policy/scheme. While setting aside the judgment of the learned Single Judge, the Division Bench noted that State Government had agreed not to terminate the muster roll, work charged and similarly placed employees working since last more than 10 years*

(not in sanctioned post) till their normal retirement age except on disciplinary ground or on ground of criminal offence. The Division Bench also noted that the State Government had agreed to enlist such employees in health and accidental and death insurance schemes to be prepared in consultation with the State Cabinet. Appreciating the stand of the State, the Division Bench directed immediate implementation of the above measures; further directing the State to pay minimum pay scale to such categories of employees w.e.f. 01.08.2017. Relevant portion of the decision dated 08.06.2017 is extracted hereunder:-

> *"22. It is, however, heartening to learn that the State Government has agreed not to terminate the Muster Roll, Work Charged and similarly placed employees working since last more than 10 years (not in sanctioned post) till their normal retirement, except on disciplinary ground or on ground of criminal offences. The State Government has also agreed to enlist such employees in Health and Accidental and Death Insurance Scheme, which will be prepared in consultation with the State Cabinet. We appreciate this positive stand of the State Government taken as welfare measures for the betterment and security of the employees, in question. We, accordingly, direct the State Government to implement the measures without further delay. Besides this, we, in the light of decision of the Supreme Court in State of Punjab vs. Jagjit Singh, (2017) 1 SCC 148, also direct the State Government to pay minimum of the pay scale to*

Muster Roll workers, Work Charged workers and similarly placed employees working since last more than 10 years (not in sanctioned post) with effect from 1.8.2017."

***44**. Therefore, having regard to the grievance expressed by the petitioners and the discussions made above, we are of the view that it would meet the ends of justice if similar benefit as granted to the muster roll, work charged and similarly placed employees working since last more than 10 years (not in sanctioned posts) is extended to the Siksha Sarathis. Accordingly, we direct the State to consider framing a scheme for the Siksha Sarathis on the above lines, which decision shall be taken within a period of 6 weeks from today."*

*52. A Division Bench of High Court of Calcutta in case of **State of West Bengal & others vrs. Anirban Ghosh & others** in **MAT No.1221 of 2019** and connected appeal in a decision dated 03.09.2020 considered the request of part-time teachers of State Government for being paid remuneration in the regular scale of pay prescribed for the full-time regular teachers of the Government schools. After referring to Section 23 of the RTE Act, the Court gave certain directions for payment of salaries to such teachers equal to basic pay in the pay scale of the regular teachers working in the higher secondary schools."*

[19.] From the above abstract, it may be seen that the Division Bench has exhaustively dealt with the matter by examining various decisions of the Apex Court including the case of *Secretary, State of Karnataka & Others -Vs- Umadevi (3) & Others,* reported in *(2006) 4 SCC 1* as well as this Court. I respectfully agree with the

findings and decision of the Division Bench and therefore, there will be no requirement to separately refer the authorities cited by the learned counsel for the petitioners. The only difference however is that the State Govt. of Tripura has a policy of initial appointment of a Teacher on fixed pay basis for a period of five (5) years which is not there in the present case. At any rate, the same cannot effect the case of the petitioners.

[20.] Now coming to the authorities relied upon by the learned counsels for the respondents. Reliance has been placed on the case of *Bharat Petroleum Corporation Ltd. & Another* (supra) by the learned Govt. Advocate to contend that Courts should not place reliance on decision without discussing as to how the factual situation fits in with the fact situation of the decision which reliance is placed. The observations of Courts are neither to be read as Euclid's theorems nor as provisions of a Statute and that too, taken out of their context. In fact, there cannot be any dispute to this proposition but the fact remains that the facts in the present case and the facts in the case of *Sajal Deb* (supra) are found to be similar and have been discussed as may be seen in the foregoing paragraphs. As such, the authority relied upon by the learned Govt. Advocate is found to be not applicable. The other authorities relied upon are *State of Haryana & Another -Vs- Haryana Civil Secretariat Personal Staff Association* (supra) and *Union of India & Others -Vs- Pradip Kumar Dey* (supra), by which the Apex Court held that the claim of equal pay for equal work is not a fundamental right vested in any employee but a constitutional goal to be achieved by the Government.

Fixation of pay and determination of parity in duties and responsibilities is a complex matter, which is for the executive to discharge. There is also no argument to this principle of law but in the facts of the present case, the same is found to be not applicable, inasmuch, as there is not material or ground taken by the respondents to indicate that the nature of duties and functions performed by the members of the petitioner association are not similar with those who have been regularly appointed by the State Government. Therefore, the said decision cannot be applied to the present case.

[21.] The decision relied upon by the learned Govt. Advocate i.e., *Union of India & Others -Vs- Ilmo Devi & Another* (supra) has also been perused but the same is also found to be not applicable to the present case in view of the fact that the employees, who were directed to be regularized in that case were contingent employees and were working on part-time basis only. The same is not the case in respect of the present petitioners.

[22.] Mr. Jonathan Lalrintluanga, learned counsel has also relied upon the decision of this Court dated 28.10.2022 passed in WP(C) No. 141/2018 *(Marina Laltlanmawii & 131 Others -Vs- State of Mizoram & 4 Others).* It may be seen that the petitioners in that case were appointed as High School and Middle School Hindi Teachers on fixed remuneration in terms of the CSS Scheme. They were appointed Co-terminus with the Scheme and the Scheme expired on 01.03.2017. Since 01.03.2017, the petitioners were no longer in service and have approached the Court only in the

year 2018. It was also the case of the respondents in that case that a new Scheme had been introduced by the Central Government and based on which, the Recruitment Rules have also been amended. The petitioners therefore except for some of them were not qualified to be appointed to the posts. It may be seen that the facts in the present case are not similar and therefore, the said decision relied upon is also found to be not applicable to the present case.

[23.] Thus, upon due consideration of the case in its entirety, I find that the grievance expressed by the petitioner association to be legitimate and has merit. Accordingly, the State respondents are directed to consider regularizing the services of the members of the petitioner association against the existing vacant posts of Government Teachers in the appropriate grade keeping in mind the experiences and training undergone by the members of the petitioner association and the object and mandate of the RTE Act or in the alternative, to sanction new posts as SSA Teachers by creating such cadre. It would also be open for the State Government to frame a scheme providing for further terms and conditions on which such regularization shall be done. Such an exercise should be initiated and completed within a period of 6 (six) months from the date of receipt of a certified copy of this Order.

[24.] With the above observations and directions, the writ petition stands disposed of. No cost.

JUDGE

Comparing Assistant