

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 316 of 2023

**Wangal Lepcha & Ors.
-Versus-
The State of West Bengal & Ors.**

For the Petitioners : Mr. Ekramul Bari.

**For respondent
Nos.6 to 10. : Mr.Debjit Kundu**

For the GTA. : Ms. Supriya Singh

**For the State : Mr. Bikramaditya Ghosh,
Mr. Pretom Das**

Heard & Judgment On : 7th February, 2023.

Bibek Chaudhuri, J.

Affidavit-of-service filed in Court today be kept with the record.

Petitioners are nine in number and they are the permanent teachers joined in their respective schools on 11.05.2015, 06.06.2016, 16.05.2016, 20.05.2017, 01.11.2018, 01.12.2018, 05.03.2019, and 29.07.2021 respectively against the permanent sanctioned vacant post. It is submitted on behalf of the petitioners

that the West Bengal School Service Commission Act for appointment of teaching and non-teaching staff in hill area under the administrative control of GTA has been suspended. There is no appointment through School Service Commission in the hill area after the introduction of the said act except one time in the year 1998-99. The Secretary, Education Department, Government of West Bengal vide memo No.957 dated 16th September, 2010 informed the District Inspector of Schools to follow the usual procedure for appointment of non-teaching staff in secondary school in DGHC till the constitution of School Service Commission in the hill area. The Assistant Teachers who were absorbed against the vacant posts but on contractual employment in the district of Darjeeling were absorbed against the said vacant posts by several orders passed by this Court. In WPA 34439(W)/2014 a Coordinate Bench of the High Court at Calcutta vide order dated 29th December, 2014 was pleased to pass the following order:-

“Thus, the concerned District Inspector of Schools (SE), Darjeeling, namely, third respondent herein and the Executive Director, Education Department, namely, the 16th respondent herein are directed to approve the appointments of the writ petitioners as Assistant Teachers of the said schools in the district of Darjeeling. The Secretary of the concerned schools, however, are directed to

send all the relevant papers regarding the respective services of the petitioners in the said schools to the District Inspector of schools (SE), Darjeeling, namely, the third respondent herein, within a period of two weeks from the date of communication of this order, if not already forwarded and the District Inspector of Schools (SE), Darjeeling namely third respondent and the Executive Director, Education Department, namely, 16th respondent herein are directed to approve the appointments, if there are vacancies within a period of four weeks from the date of receipt of the said papers from the Managing Committee of the said schools”.

The State of West Bengal filed an appeal against the above-stated judgment passed by a Coordinate Bench being FMA 2804/2016. By an order dated 9th March, 2017 the said appeal was dismissed for non-prosecution as the State of West Bengal did not pursue with the appeal. Therefore, the judgment passed by the Hon’ble Single Bench of the High Court at Calcutta in WP No.34439(W)/2014 dated 29th December, 2014 stands. The petitioners in the said writ petitions were accordingly absorbed against the vacant posts of the schools.

The writ petitioners have prayed for similar relief in the instant writ petition.

It is submitted by Ms. Supriya Singh, learned Advocate for the GTA that the identical issue is involved in a series of writ petitions being WPA 697/2022 with other analogous matters. On 11th March, 2023, a Coordinate Bench has formulated an issue in the said matter to the effect as follows:-

“What is the stand of the Government of West Bengal and the GTA regarding applicability of the provisions of West Bengal School Service Commission Act, 1997 in the GTA area is the larger issue that has cropped up in the instant writ petition and also in the analogous matters.”

The above issue is under consideration in 17 similar writ petitions before a Coordinate Bench in the principal seat at Calcutta. Therefore, the learned Advocate for the GTA submits that at this stage no decision can be taken in the instant writ petition and the instant writ petition may be sent to the High Court at Calcutta for decision with WPA 697 of 2022.

I have heard the learned Advocate for the petitioners and the learned Advocate for the GTA as well as the State respondent. In the instant matter the question that requires adjudication is as whether the petitioners are entitled to be absorbed any vacant sanctioned posts as Assistant Teachers in their respective schools falling within the GTA administration.

The GTA Act, 2011 stipulates in Section 26:-

“26. Subject to the provisions of this Act and any other law for the time being in force and any general or special directing of the Government, the Gorkhaland Territorial Administration shall have administrative, financial and executive powers in the region in relation to-

(v) School Education including primary education, secondary education, higher secondary education (including vocational training); Physical Education; Government Schools.”

The issue has been conclusively decided in WP No. 34439(W)/2014.

No larger issue with regard to the applicability of the West Bengal School Service Commission Act, 1997 is applicable in the instant writ petition.

Accordingly, I am not inclined to adjourn and send the matter for hearing with WPA 697/2022.

Since the petitioners were appointed as voluntary teachers against sanctioned posts, they are entitled to be appointed against vacant seats of the schools.

The District Inspector of schools (SE), Darjeeling, respondent No.5 herein and the Executive Director, Education Department, GTA, respondent No.2 herein are directed to approve the appointments of

the petitioners, if there are vacancies within a period of four weeks from the date of receipt of the papers relating to their joining in the respective schools and discharging continuous functions as Assistant Teachers from the Managing Committee of the respective schools. The petitioners are to be communicated within one week thereafter.

The instant writ petition is, thus, disposed of on contest, however, without any costs.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 5.