

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction**

WPA 727 of 2023

Ajay Kumar Kharka
-versus
Gorkhaland Territorial Administration
Council, Lalkuthi & Ors.

Mr. Ekramul Bari
... For the petitioner.

Mr. Hirak Barman
Mr. Momenur Rahman
...For the State.

Ms. Supriya Singh
... For the GTA

In this writ petition, the petitioner is seeking regularization of her service as an assistant teacher of in Bagrakote Higher Secondary School, wherein he has been appointed with effect from 21st December, 2009 as temporary full time teacher against a permanent sanctioned vacant post.

The case of the petitioner is that the application of the West Bengal School Service Commission Act, 1997 has been suspended in respect of the area falling under Gorkhaland Territorial Administration Council, (in short, GTA). The petitioner says that the same issue, like that of the petitioner fell for consideration before this Court in WPA 1181 of 2021 (Thinlay Bhutia & Ors. vs. Gorkhaland Territorial Administration Council &

Ors.). The said writ petition was disposed of by an order dated 4th November, 2022 by directing the respondent authority concerned to grant approval to the petitioner subject to fulfillment of the criteria of eligibility in post in question after following the procedure adopted by them as indicated in paragraph 6 of the report which was filed in the said case. The case of the petitioner is that the same report in verbatim has been filed in the instant case. The petitioner has also relied upon a judgment and order dated 7th February, 2023 passed in WPA 316 of 2023 (Wangal Lepcha & Ors. vs. The State of West Bengal & Ors.).

The learned advocate appearing on behalf of the GTA as also the learned advocate for the state submit that in a series of writ petition being WPA 697 of 2022 with other analogous matters involving the identical issue as in the instant case, a coordinate Bench has formulated the following point:-

“What is the stand of the Government of West Bengal and the GRA 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”.

These matters were fixed before the Principal Bench on 11th March, 2023 and are also appearing in the day's list. It is submitted that in the event this

matter is taken up in isolation, there may be conflict of decision and as such the matter should be adjourned. This submission was also made before the Court on 7th February, 2023 at the time of hearing of WPA 316 of 2023 but the learned Single Judge did not accept such submission and passed the judgment and order dated 7th February, 2023.

It is well-settled that normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be fitted alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle is also applicable in service jurisprudence. Reliance on this issue can be placed on *State of Uttar Pradesh and Others v. Arvind Kumar Srivastava and Others*, reported in (2015) 1 SCC 347 (para. 22.1 to 22.3). This ratio has been approved in a very recent judgment reported in (2022) SCC online SC 641 (*Rushibhai Jagdishbhai Pathak vs. Bhavnagar Municipal Corporation*).

As the benefit has been granted to a set of teachers all other identically situated need to be fitted alike by extending that benefit. The petitioner will be also subjected to hardship if the petitioner is not extended the benefit particularly, when the application of School Service Commission Act, 1997 has remained suspended in GTA area and at the same time the

Government aided school are operating without there being any specific rules formulated for fresh appointment or for regularization of the teachers already appointed on temporary basis against permanent vacant post during the period when the application of the said Act had remained suspended.

In the aforesaid facts and circumstances, the respondent nos. 1 to 4 are directed to approve the appointment of the petitioner if the petitioner fulfils all other requisite criteria to be appointed in the post against which she has been appointed on temporary basis if her appointment was against a permanent sanctioned post.

The entire exercise should be completed within a period of eight weeks from date.

With the above direction, the writ petition is disposed of.

All parties shall act on a server copy of this order duly downloaded from the official website of this Court without insisting upon production of a certified copy thereof.

Urgent photostat certified copy of this order if applied for, be given to the parties, upon compliance with the requisite formalities.

(Arindam Mukherjee, J.)