

29.11.2023
Sl. No.48
srm

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

W.P.A. No. 1391 of 2022

Rojan Rai

Versus

The Gorkhaland Territorial Administration & Ors.

Mr. Pritam Chowdhury

....for the Petitioner.

Ms. Supriya Singh

.....for the GTA.

Mr. Hirak Barman,
Mr. Pretom Das

...for the State-respondents.

Supplementary affidavit as also affidavit-of-service
filed by the petitioner is taken on record.

The petitioner was initially engaged as a teacher in
an unrecognized school by the Darjeeling Gorkha Hill
Council (DGHC) on contractual basis. It does not appear
that there was any particular selection process followed by
the DGHC, while engaging the petitioner.

After the Gorkha Territorial Administration (GTA)
took over the administration, the petitioner was
transferred to the nearest high/higher secondary school.

Order of such transfer indicates that by approval of the competent authority of the GTA, the Assistant Teachers who were posted at unrecognized junior high schools, having zero enrolment, were placed to the nearest schools on *ad hoc* basis.

The petitioner was treated as an *ad hoc* teacher even thereafter. He moved this Court, by filing an application under Article 226 of the Constitution of India being WPA No.352 of 2019.

The concerned District Inspector of Schools, at the relevant point of time, had expressed an opinion in favour of regularizing such teachers. A learned coordinate Bench directed that the appointment of the petitioner should be approved and regularized, in terms of the observation of the District Inspector of Schools dated February 9, 2018. Approval for appointment of the petitioner was given. Thus, as per the records, the petitioner was absorbed in the regular establishment of the school under the GTA on and from August 22, 2019. The petitioner retired soon thereafter, but was not allowed any pensionary and other retirement benefits. Hence the writ petition has been filed.

Mr. Chowdhury, the learned Advocate for the petitioner submits that the petitioners had rendered service since 2002, till the date of retirement and he must

be allowed pensionary benefits. The petitioner was appointed by the DGHC and the function of the DGHC is now being discharged by the GTA. The GTA has stepped into the shoes of the DGHC and the actions of the DGHC should be binding on the GTA. Thus, it is prayed that the directions be passed upon the concerned authority of the GTA to treat the service rendered by the petitioner on contractual basis in the unrecognized schools as qualifying service for pensionary and other retirement benefits.

Ms. Singh, learned Advocate for the GTA opposes such prayer and submits that the engagement of the petitioner by the DGHC sometime in 2002 in an unrecognized (private) zero enrolment school would not be counted as qualifying service for grant of pension. Ms. Singh further submits that the employee who has served not more than two years in the regular establishment from the date of approval was not entitled to any pension. The petitioner was engaged first on contractual basis and then on *ad hoc* basis.

Having heard the learned Counsel for the respective parties, it is found that certain issues are still unresolved.

(a) The service conditions of teachers under the GTA are yet to be finalized.

(b) The method of appointment has also not been laid down.

The Court does not find from the records that the appointment of the petitioner, by the DGHC in an unrecognized school was done through any selection process. Definitely there were no sanctioned posts. He was engaged on contractual basis.

The teacher was absorbed by the GTA in the main establishment in 2019 on *ad hoc* basis. Thereafter, by an order of the Court, the teacher was given approval on and from August, 2019. Such approved teacher served approximately for two years. Under the general laws applicable, the petitioner does not have qualifying service for grant of pensionary benefits. However, the case of teachers under GTA, should be decided as there are no service rules as yet.

Under such circumstances, this Court is of the view that the decision has to be taken by the appropriate authority of the GTA as to how they wish to treat the petitioner and whether, at all, any retirement benefits would be payable to the said teacher.

The writ petition is disposed of with a direction upon the respondent No.1 to treat the writ petition as also the supplementary affidavit as representations of the

petitioner and dispose of the same in accordance with law.

A reasoned order shall be passed upon hearing the petitioner or his learned Advocate, which shall be communicated to the petitioner.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)