

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

WPA 1233 of 2023

Nishul Chamling

Versus

**Gorkhaland Territorial Administration
Council & Ors.**

Mr. Ekramul Bari

Mr. Siddhartha Sankar Mandal

SK. Imtiajuddin

... For the Petitioner.

Mr. Subir Kumar Saha, Ld. AGP

Mr. Momenur Rahman

... For the State.

Mr. Debajit Kundu

... For the respondent no. 6.

Heard on : 09.06.2023

Judgment on : 14.06.2023

Krishna Rao, J.:

1. The petitioner was selected to the post of Assistant Teacher, English by the school authority by an order dated 15th March, 2016 and the

petitioner is rendering his continuous service as Assistant Teacher with effect from 21st March, 2016.

2. The West Bengal School Service Commission Act for appointment of teaching and non-teaching staff in hill area under the administrative control of Gorkhaland Territorial Administration Council (in short herein after called as “GTA”) has been suspended. There is no appointment through the School Service Commission in the hill area after the introduction of the said Act except one time in the 1998-1999.

3. The Secretary, Education Department, Government of West Bengal vide memo dated 16th September, 2010 informed the District Inspector of School to follow the usual procedure for appointment of non-teaching staffs in the Secondary School in DGHC till the constitution of School Service Commission in the hill the area.

4. The Assistant Teachers who were absorbed against the vacant post but on contractual basis in the district of Darjeeling were absorbed against the said post by several orders passed by Coordinate Bench of this Court.

5. In WPA No. 34439 (W) of 2014, Coordinate Bench of this Court by an order dated 29th December, 2014 was pleased to pass the following order:

“Thus, the concerned District Inspector of Schools (SE), Darjeeling, namely 3rd respondent herein and 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 the schools (SE), Darjeeling, namely, the 3rd respondent herein, within a period of two weeks from the date of communication of the order, if not already forwarded, and the District Inspector of

Schools (SE), Darjeeling, namely 3rd respondent and the Executive Director, Education Department, namely 16th respondent herein are directed to approve the appointments, if there are vacancy within a period of four weeks from the date of receipt of the said papers from the Managing Committee of the said schools.”

6. Being aggrieved with the order passed by the Coordinate Bench of this Court, the State of West Bengal had preferred an appeal being FMA 2804 of 2016 but 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 and accordingly the petitioners of WP No. 34439 (W) of 2014 were absorbed against the vacant posts of the schools.

7. Similarly several writ petitions were filed before the Coordinate Bench of this Court being WPA No. 316 of 2013, WPA No. 727 of 2023 and WPA No. 1181 of 2021 praying for similar relief and accordingly all the writ petitions have been disposed of in terms of the order passed in WPA No. 34439 (W) of 2014 (supra) and accordingly the Coordinate Bench of this Court has allowed all the writ applications.

8. In the present writ application also the petitioner has prayed for similar relief.

9. Mr. Subir Kumar Saha, learned AGP representing the GTA submitted that the identical issue is involved in a series of writ petitions being WPA 697 of 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 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 are is the larger issue that has cropped up in the instant writ petition and also in analogous matters.”

10. The similar submission was also made by the learned Counsel appearing for the GTA before the Coordinate Bench at the time of hearing of WPA No. 316 of 2023 but the Hon'ble Judge did not accept such submission and disposed of the said writ petition by passing a judgement dated 7th February, 2023.

11. It is well settled that normal rule is that when a particular set of employees are given relief by the Court, all other identically situated persons need to be extended the same benefits. By 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.

12. As the benefits have been extended to a set of teachers, all other identically situated teachers are also entitled to get the said 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 schools are operating without there being any specific rules formulated for fresh appointment or for regularisation of the teachers already appointed on temporary basis against the permanent vacant post during the period when the application of the said Act had remain suspended.

13. In view of the above 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 the petitioner has been appointed on temporary basis if, his appointment was against the permanent sanctioned post.

14. The respondents are directed to complete the entire exercise within a period of eight weeks from date.

15. WPA No. 1233 of 2023 is thus **disposed of**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)