

29.11.2023
Sl. No.45
srm

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

W.P.A. No. 2520 of 2021

Dhiren Gurung & Ors.

Versus

The Gorkhaland Territorial Administration & Ors.

Mr. Pritam Chowdhury

....for the Petitioners.

Ms. Supriya Singh

.....for the GTA.

Mr. Hirak Barman,
Mr. Pretom Das

...for the State-respondents.

Supplementary affidavit filed by the petitioners is
taken on record.

The petitioners were initially engaged as teachers in
unrecognized schools 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 petitioners.

After the Gorkha Territorial Administration (GTA)
took over the administration, the petitioners were
transferred to the nearest high/higher secondary schools.

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.

The petitioners were treated as *ad hoc* teachers even thereafter. They moved this Court, by filing an application under Article 226 of the Constitution of India being WPA No.569 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 appointments of the petitioners should be approved and regularized, in terms of the observation of the District Inspector of Schools dated February 9, 2018. Approval for appointments of the petitioners was given. Thus, as per the records, the petitioners were absorbed in the regular establishment of the schools under the GTA on and from January 30, 2019. The petitioners retired soon thereafter, but were not allowed any pensionary and other retirement benefits. Hence the writ petition has been filed.

Mr. Chowdhury, the learned Advocate for the petitioners submits that the petitioners had rendered service since 2000, till the date of retirement and they must be allowed pensionary benefits. The petitioners were

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 petitioners 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 engagements of the petitioners by the DGHC sometime in 2000 in unrecognized (private) zero enrolment schools 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 petitioners were 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 appointments of the petitioners, by the DGHC in unrecognized schools were done through any selection process. Definitely there were no sanctioned posts. They were engaged on contractual basis.

The teachers were absorbed by the GTA in the main establishment in 2019 on *ad hoc* basis. Thereafter, by an order of the Court, the teachers were given approval on and from January, 2019. Such approved teachers served approximately for two years. Under the general laws applicable, petitioners do 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 petitioners and whether, at all, any retirement benefits would be payable to the said teachers.

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

petitioners and dispose of the same in accordance with law. A reasoned order shall be passed upon hearing the petitioners or their learned Advocate, which shall be communicated to the petitioners.

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.)