

CALCUTTA HIGH COURT
In The Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction

Present:
The Hon'ble Mr. Justice Arindam Mukherjee

WPA 2333 of 2024

Umesh Thapa
Vs.
Gorkhaland Territorial Administration Council, Lalkuthi & Ors.

For the Petitioner:- Mr. Ekramul Bari,
Mr. Sk. Imtiaz Uddin,
Ms. Rishita Chakraborty

For the State : Mr. Anirban Banerjee,
Mr. Bikash Singha

For GTA Ms. Supriya Singh

For the respondent
No. 2-5 :- Mr. Siddhaarth Sarkar Mandal,
Mr. A. Ahmed

Heard on : 08.11.2024.

Judgement on: 08.11.2024.

Arindam Mukherjee, J. :-

1. The petitioner was appointed on purely temporary basis as a Group-C employee in Potong High School (respondent no.8). The date of joining of the petitioner as per the joining report annexed to the writ petition is 5th October, 2020. The petitioner says that he has been rendering service in the said school continuously since then.

2. The petitioner is seeking regularization of his services.
3. The application of the School Service Commission constituted under the West Bengal School Service Commission Act, 1997 (hereinafter referred to as 'the 1997 Act) has been restricted in respect of the erstwhile Darjeeling Gorkha Hill Council (in short, DGHC), which is presently known as Gorkhaland Territorial Administration (in short, GTA), in view of the provisions of Gorkhaland Territorial Administration, Act 2011, has admittedly remained suspended from a long time in past. Subsequent to the suspension of the application of the 1997 Act, in respect of DGHC the District Inspector of Schools (SE), DGHC, Darjeeling was directed by a memo dated 16th September, 2010 by the Secretary, Department of Education, DGHC, Darjeeling to follow the usual procedure for appointment of non-teaching staff in secondary schools under DGHC till the constitution of the School Service Commission in hill area.
4. The procedure adopted in appointing the petitioner on temporary basis, therefor, cannot be flouted in view of the aforesaid facts and circumstances. It is also not in dispute that the petitioner has rendered continuous service since 5th October, 2020.
5. The issue of regularization of non-teaching staff in the schools under GTA has fallen for consideration in several matters

before this Court. In one of such writ petitions relating to non-teaching staff the order passed by the learned Single Judge directing regularization of the non-teaching staff was challenged before the Division Bench in ***MAT 170 of 2023 (Gorkhaland Territorial Administration & Ors. vs. Thinley Bhutia & Ors.)***. The said appeal was disposed of by an order dated 16th August, 2024 upholding the order of the learned Single Judge directing the regularization of the non-teaching staff. Subsequent to such order by an office order dated 5th September, 2024, Gorkhaland Territorial Administration, Department of Education regularized the services of several Group-C and Group-D staff in different schools under GTA.

6. The issue as to regularization of the teaching staff similarly fell for consideration before the Court in several matters. The order of the learned Single Judge in WPA 727 of 2023 dated 12th May, 2023 directing regularization of a teacher in a school appointed on contractual basis against a permanent sanctioned post was assailed before the Division Bench in MAT 203 of 2023 (***The Gorkhaland Territorial Administration & Anr. Vs. Ajay Kumar Kharka***). A Division Bench of this Court by a judgment and order dated 13th September, 2024 had upheld the order of the learned Single Judge, being the order impugned in the said appeal. In course of hearing of the said MAT 203 of 2023, the

appellant therein (respondent nos. 1, 2 and 3 in this writ petition) had contended that the judgment and order dated 16th August, 2024 of a Coordinate Appellate Court in MAT 170 of 2023 being passed in respect of non-teaching staff was not applicable in respect of a teaching staff, being the subject matter of the said appeal, being MAT 203 of 2023. The Division Bench overruled such contention and finally held that in a case where an Assistant Teacher is appointed on temporary basis in a government aided school during the subsistence of vacancies in the permanent sanctioned post no official sanction or approval from the State Government is necessary.

7. The same ratio, according to me, is applicable in respect of non-teaching staff. Furthermore, Gorkhaland Territorial Administration, Department of Education by the office order dated 5th September, 2024 has accepted the order passed by the Division Bench in MAT 170 of 2023 passed on 16th August, 2024 thereby regularizing 34 non-teaching staff in different schools under GTA.
8. It is well-settled in view of the ratio laid down in the judgment of the Hon'ble Supreme Court reported in **(2015)1 SCC 347 (State of Uttar Pradesh and Others v. Arvind Kumar Srivastava and Others)** (para. 22.1 to 22.3), 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 such benefit. In not doing so it would amount to discrimination and would be violative of Article 14 of the Constitution of India. The same principle has been upheld in a subsequent judgment of Supreme Court reported in **(2022) SCC online SC 641 (Rushibhai Jagdishbhai Pathak vs. Bhavnagar Municipal Corporation)**.

9. In the aforesaid facts and circumstances, I have no hesitation in directing the respondents to regularize the petitioner provided he has been appointed on temporary basis against a permanent sanctioned post. The Gorkhaland Territorial Administration, Department of Education, and in particular the respondent nos.2 and 6 shall first ascertain the number of sanctioned permanent post in respect of non-teaching staff in Potong High School and then find out whether such permanent vacancies have been filled up. If the permanent vacancies of non-teaching staff in the said school have not been filled up then, the respondent no.2 shall issue necessary direction and documents to regularize the service of the petitioner from a given date with the corresponding scale of pay after taking into account the respective date of joining on temporary basis if there are more than 1(one) such non-teaching staff seeking regularisation. This is more so because in view of the finding of the Division Bench in **Ajay Kumar Kharka** (supra) that no official sanction or approval from the State Government is necessary for

regularizing the service of a teaching staff appointed temporarily against a permanent sanctioned post, which I have already held should be applicable in respect of non-teaching staff.

10. The entire exercise should be completed within a period of eight weeks from the date of communication of a server copy of this order.
11. The parties including the respondent nos.2 and 6 shall act on the basis of a server copy of this order duly downloaded from the official website of this Court without insisting upon production of a certified copy thereof.
12. Nothing further remains to be adjudicated in this writ petition. The same is accordingly disposed of.
13. Since I have not called for any affidavit, allegations contained in the writ petition are deemed to have not been admitted by the respondents.
14. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance with the requisite formalities.

(Arindam Mukherjee, J.)