

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

The Hon'ble Justice Rajarshi Bharadwaj
And
The Hon'ble Justice Md. Shabbar Rashidi

MAT 170 of 2023

The Gorkhaland Territorial Administration & Ors.

-Vs-

Thinley Bhutia & Ors.

For the Appellants : Mr. B.P. Subha
Ms. Supriya Singh

For the Respondents : Mr. Ekramul Bari
Mr. Imtiaj Uddin
Ms. Rinka Chakraborty

For the State : Mr. Hirak Barman
Mr. Pretom Das

Reserved On : 11.07.2024.

Pronounced On : 16.08.2024

Rajarshi Bharadwaj, J.:

1. By this appeal, the correctness of the judgement of the Learned Single Judge dated 04.11.2022 passed in W.P.A. No 1181 of 2022 (Thinlay Bhutia & Ors-versus-The Gorkhaland Territorial Administration Council & Anr) has been questioned by the appellants (respondents no. 1-2 in the writ petition).

2. The brief facts of the case are that the petitioners herein the respondents no. 1-37 are the non-teaching staff, appointed by their respective school authorities against the permanent sanctioned vacant post in their respective schools.

3. The West Bengal School Service Commission Act, 1997 while operative for appointing teaching and non-teaching staff in schools, is not applied in the hill region, leading to staffing difficulties. The Hon'ble High Court issued several orders for approving the appointment of long-serving teaching staff against sanctioned vacant posts in Darjeeling schools. Subsequently, the Gorkhaland Territorial Administration (GTA) herein the appellant no.1 formed a verification committee for non-teaching staff. An order issued by the Executive Director, Education Department, GTA herein the appellant no.2, on 11th February 2021, directed the District Inspectors of Schools (SE) in Darjeeling and Kalimpong herein the respondent no. 39 and 40, respectively to verify documents of non-teaching staff, which was conducted on 19th and 20th February 2021, respectively.

4. The appellant no.2, in a memo dated 03.09.2019, further instructed physical inspections and report submissions of these staff. On the other hand, the non-teaching staff in the hill region formed the Hill Temporary Insecure Non-Teaching Staff Association, OTA, to advocate for permanent approval of Group "C" and "D" staff under the Education Department, GTA.

5. Despite the respondent no.39 submitting a regularization proposal for ad-hoc/volunteer non-teaching staff on 20.12.2016, no action was taken. The association president submitted a list of the voluntary non-teaching staff to the Hon'ble Chairman of GTA on 30.07.2019, but no decision was made regarding their permanent approval against vacant sanctioned posts.

6. Thus, being aggrieved by the protracted delay exhibited by Respondents Nos. 37-67 in granting approval for the permanent appointment of the petitioners, herein respondents No. 1-37, pursuant to the verification

conducted by the authorities, WPA 1181 of 2022 was instituted. In this matter, the Learned Single Judge rendered the following order:

"This writ petition, designated as WPA 1181 of 2021, is hereby disposed of with a directive to the relevant respondent authority to accord approval to the appointment of the petitioners, contingent upon the fulfillment of the eligibility criteria for the said post, following the established procedural protocol, within a period of eight weeks from the date of receipt of this order."

7. Being dissatisfied with the directives issued by the Learned Single Judge, the appellant has filed the current memorandum of appeal, contesting and seeking redress against the impugned judgment and order dated 4th November 2022.

8. The Learned Counsel for the appellants submits that the petitioners/respondent's no. 1-37 claim of legitimate expectation based on past absorptions is legally untenable. Past instances of absorption on a contractual basis do not create an automatic right for the petitioners/respondents no. 1-37 to be absorbed as a permanent employee. Reliance on previous judgment by this Hon'ble Court in **Arbind Rai & Ors. Vs. The State of West Bengal & Ors.** in **WP 34439 (W) of 2014** has been placed by the petitioners/respondents no. 1-37 does not substantiate a claim of discrimination or guarantee of absorption. Moreover, there is no violation of Article 14 of the Constitution of India. The petitioners/respondent's no. 1-37 plea of discrimination is unfounded as they were appointed on a contractual basis with a clear understanding of the terms of service. The authorities' actions are in accordance with legal principles and do not infringe upon the petitioners/respondents no. 1-37 constitutional rights.

9. The appellants submits that the Government Notification Memo no. 103/IS(SB)/A SE/IA-3211 dated 01.10.2012, which stipulated those existing

vacant posts within the GTA areas as per section 26 of the Gorkhaland Territorial Administration Act, 2011 shall not be filled without State Government concurrence.

“26. Subject to the provisions of this Act and any other law for the time being in force and any general or special direction of the Government, the Gorkhaland Territorial Administration shall have administrative, financial and executive powers in the region in relation to—

(v) School Education including primary education, secondary education, higher secondary education (including vocational training); Physical Education; Government Schools;”

10. This notification underscores the procedural and statutory limitations governing the appointments as ultimately the salary of the petitioners/respondents no. 1-37 would come from the State Government's Exchequer.

“In presence of the provisions of Section 26 of Gorkhaland Territorial Administration Act, 2011 (West Bengal Act, XX of 2011 read with Section 60(1) and 60(2) of the said Act, and the cancellation of this department notification No. 584, SEP(Pry)2P-13/89 dated 18.07.1996 the Government of pleased hereby to issue the following direction

- 1. Executive powers in relation to the items of works, officers/institution as per SCHEDULE-A below in the region started in Section 2 clause (O) of the Act (hereinafter referred to as the said region) said transferred to the Gorkhaland Territorial with immediate effect.***
- 2. Services of all State Government officers and staff, as detailed in Schedule -B below, working in State Government Officer/installation out of list mentioned in the Schedule- A in the aforesaid region in the District of Darjeeling are placed at the disposal of the Gorkhaland Territorial Administration deputation with immediate effect.***

SCHEDULE-A

Sl. No.	Name of Units/officers/Institutions	Remarks
1.	Officer of the District Inspector of School (Primary), Darjeeling and its subordinate Government officers in the said region.	
2.	Office of the District Inspector of School (Secondary) Darjeeling and its subordinate Government Officers, in the said region.	
3.	Officer of the District Physical Education and Youth welfare, Darjeeling and its subordinate Government Officers in the said region.	
4.	Office of the District Project Officer, Darjeeling, Satya Shiksha Mission.	
5.	Officer of the District School Board, Darjeeling.	
6.	All Government pre-primary, Junior High Court and Higher Secondary School in the said region, except victoria Boy's School and Dowhills Girls School at Kurseong.	
7.	All non-Government State aided or State sponsored or unaided recognized pre-primary, primary, Junior High and Higher Secondary Schools in the said region.	
8.	All State Government Primary Teachers Training Institution in the said region.	
9.	All non-Government State aided, State sponsored or State recognized Primary Teachers Training Institute in the said region.	

SCHEDULE-B

Sl. No.	Name of officers/Institutions	Remarks
1.	Officer of the District Inspector of School (Secondary), Darjeeling.	Service of all Gr.A. Gr.B. Gr.C & Gr. D Staff in position are placed on deputati on.
2.	Office of the District Inspector of School (Primary) Darjeeling.	
3.	Office of the District Physical Education and Youth welfare, Darjeeling and its subordinate Government Officers in the said region.	
4.	All Government pre-primary, Junior High Court and Higher Secondary School in the said region, except victoria Boy's School and Dowhills Girls School at Kurseong.	
5.	All Government Primary Teachers Training Institutes in the said region.	

3. *The Governor is further pleased to direct that:-*

- (a) The West Bengal Board of Primary Education, the West Bengal Board of Secondary Education and the West Bengal Council of Higher Secondary Education remain at the Academic Authority in respect of primary education, secondary education and higher secondary education respectively in the said region,*
- (b) Plan and non-plan funds for different educational, activities and salaries for the Officers and Staff deputed under SCHEDULE-B above shall continue to be allotted to the existing DDOs and receipts of fund of the said region by the Different fund allotting authorities under School Education Department and*
- (c) The Principal Security to the GTA Sabha shall ex-office be the Chairperson of the Combined Governing Body of Victoria Boys' School and Dowhills Girls School at Kurseong with effect from the date admission office.*
- (d) Sabha in all matters pertaining to tours, leave and similar other matters.*
- (e) The powers of the committing authority in respect of the said same Government officers and staffs so deputed shall vest on the GTA Sabha.*
- (f) They will not be entitled in any deputation allowance and GTA Sabha will not be required to pay any foreign service contribution or pension contribution in respect of them for the period of their deputation and*
- (g) Existing vacant, Government posts in the offices and institutions so transferred under Schedule-B above shall not be filled up without concurrence of State Government.*

11. The appellants further detail the series of communications post the Learned Single Judge's order, demonstrating compliance with procedural requirements. Letters issued by the Principal Secretary, GTA, and the appellant no.2, seeking instructions and reports, underscored the procedural diligence exercised by the authorities.

12. The appellants further assert that the Hon'ble Single Judge failed to appreciate the statutory framework regulating the petitioners/respondents no. 1-37 service conditions. The service conditions have always been governed by notices published by the Finance Department of the West Bengal Government. The appellants contend that there is no statutory provision for regularization of the petitioners/respondents no. 1-37 contractual appointment.

13. Learned Counsel for the petitioners/respondents no. 1-37 submits that the President of the Hill Temporary Insecure Non-Teaching Staff Association, GTA, presented a list of voluntary non-teaching staff (Group C and D) to the Hon'ble Chairman of GTA on 30.07.2019. Despite this, no decisions were made regarding the non-teaching staff working against vacant sanctioned posts. The respondents contend that the GTA, having decided to approve appointments for staff in similar positions, cannot delay action indefinitely. In parallel situations, temporary teaching staff were approved by the Education Department, GTA. Denying the same benefit to the respondents, who are similarly placed, constitutes discrimination and violates Article 14 of the Constitution of India.

14. Furthermore, the respondents should not be deprived of their legitimate expectation for permanent approval when the GTA authority has taken a policy decision to absorb all teaching and non-teaching staff in the hill areas. The GTA constituted a verification committee, which included the respective District Inspector of Schools. This committee has completed its verification and is awaiting a final decision. The inaction of the GTA in taking steps for

permanent approval based on the verification committee's report is violative of Article 14 of the Constitution of India, as similarly placed candidates have been granted permanent approval based on the committee's findings. Additionally, the impugned order of the learned Single Judge directs the relevant respondent authorities to approve the petitioners/respondents no. 1-37 appointments, contingent upon meeting the eligibility criteria and to follow the established procedural protocol. However, this directive has not been adhered to by the GTA authorities.

15. The learned counsel for the State has contended that the state bears no responsibility in this matter, as no official sanction or approval is mandated for government-aided educational institutions, unlike government-run schools. The rationale provided is that the positions in question within government-aided schools do not qualify as government posts, thereby exempting them from the procedural requirements applicable to governmental employment.

16. Having heard the learned counsel for the parties and perusal of the records this Court is of the opinion that the Learned Single Judge's directive for the relevant respondent authorities to approve the appointments of the petitioners/respondent no. 1-37, contingent upon the fulfilment of eligibility criteria and following established procedural protocol, is legally sound and reasonable. As the State Government lacks the authority to intervene in the process of permanently appointing non-teaching staff, and no official sanction or approval is mandated for government-aided educational institutions, unlike government-run schools. The procedural and statutory limitations cited by the appellants, including the requirement of state government's concurrence for filling vacant posts, do not override the directive for verification and approval conducted by the relevant authorities.

17. Therefore, as the managing committee of each aided school is obligated to deposit, on a monthly basis, its contribution towards the remuneration and

other mandated benefits with the Administrator. The Administrator is then responsible for the disbursement, or ensuring the disbursement, of the salaries and allowances to the employees of the aided schools within the first week of each month. The managing committees of the respective schools herein respondents no. 41-65, in conjunction with the GTA, must recruit the qualified petitioners/respondent no. 1-37 in accordance with the criteria outlined in the Learned Single Judge's order.

18. For the foregoing reasons, no case is made out to interfere in the order of the learned Single Judge and therefore, the appeal is disposed of. All pending applications are accordingly disposed of.

19. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

[Rajarshi Bharadwaj, J.]

[Md. Shabbar Rashidi, J]

Kolkata

16.08.2024

PA (BS)