

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

Present:
The Hon'ble Mr. Justice Arindam Mukherjee

WPA 2355 of 2024

Kishan Rai & Ors.
Vs.
Gorkhaland Territorial Administration Council, Lalkuthi & Ors.

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

For the State:- Ms. Bedashruti Bose,
 Mr. Sumit Kumar
For the G. T. A.:- Ms. Supriya Singh

Heard on : 12.11.2024.

Judgement on: 12.11.2024.

Arindam Mukherjee, J. :-

1. The petitioners are five in number. The petitioners were appointed on purely temporary basis as Assistant Teachers in Judhabir Higher Secondary School (respondent no.8) respectively on 02.09.17, 05.04.17,

06.09.21, 01.07.22 and 01.07.22. The appointment letter issued by the said school and the joining report are annexed to the writ petition. The petitioners say that they have been rendering service in the said school continuously since their respective appointment.

2. It is also the case of the petitioners that the said school was upgraded and the posts of the teaching staff were lying vacant and the school authority appointed the petitioners on temporary basis against such vacant posts. The petitioners are seeking regularization of their 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 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 petitioners on temporary basis, therefor, cannot be flouted in view of the aforesaid facts and circumstances. It is also not in dispute that the petitioners have rendered continuous service since their respective engagement/appointment.
5. The issue as to regularization of the teaching staff 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.

6. The issue of regularization of teaching and non-teaching staff in the schools under GTA has fallen 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.
7. 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.

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)**. Since the Division Bench in **Ajay Kumar Kharka** (supra) has allowed the regularization of a teacher appointed on contractual basis against a sanctioned post, the petitioners are also entitled to have their claim considered for the similar relief.

9. In the aforesaid facts and circumstances, I have no hesitation in directing the respondents to regularize the petitioners provided they have 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 subject wise Assistant Teachers in Judhabir Higher Secondary School and then find out whether such permanent vacancies have been filled up. If the permanent vacancies of subject wise Assistant Teachers 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 petitioners against such subject wise vacancies from a given date with the corresponding scale of pay. 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.
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.)