

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

**MAT 203 of 2023
With
CAN 2 OF 2024
The Gorkhaland Territorial Administration & Anr.
Vs.
Ajay Kumar Kharka**

**Before: The Hon'ble Justice Harish Tandon
&
The Hon'ble Justice Apurba Sinha Ray**

For the Appellant	: Ms. Supriya Singh, Adv.
For the State	: Mr. Hirak Barman, Adv. Mr. Momenur Rahman, Adv.
For the Respondent/Writ Petitioner	: Mr. Ekramul Bari, Adv. Mr. Sk. Imtiazuddin, Adv. Ms. Rinka Chakraborty, Adv.
CAV On	: 05.09.2024
Judgment On	: 13.09.2024

Apurba Sinha Ray, J. :-

1. The order dated 12.05.2023 in WPA 727 of 2023 of the Learned Single Judge has been challenged in this appeal on the grounds, inter alia, that the Learned Single Judge has failed to consider that the respondent/writ petitioner Ajay Kumar Kharka had been appointed in a Government-aided school on contractual basis with consolidated remuneration by the Education Department of the erstwhile Darjeeling Gorkha Hills Council and the service condition of the respondent have always been regulated by the relevant notices published by the Finance Department of the West Bengal Government from time to time. It is further submitted that the relevant statute governing the service conditions of the post to which the respondent seeks regularization has no express provision for regularization of any irregular appointment to the posts. The learned counsel appearing for the appellant has further submitted that earlier decisions of the Coordinate Benches of this Hon'ble Court did not lay down any law nor take steps towards resolution of the conflict of the legal stances in which the respondents were entangled in.

2. The learned counsel drew the attention of this Court to Section 26 of the Gorkhaland Territorial Administration Act, 2011 (GTA Act, 2011 in short) in support of her contention. Finally the learned

counsel has submitted that as the respondent/writ petitioner belongs to the post of Assistant Teacher of a Government-aided school and has been appointed temporarily in a non-sanctioned post his absorption in the permanent category cannot be done without concurrence of the State Government since the appellant is not his appointing authority.

3. The learned counsel appearing for the respondent /writ petitioner no. 1 has submitted that the contention of the appellant has no leg to stand upon in view of the order dated 16.08.2024 passed in MAT 170 of 2023 by the Hon'ble Co-ordinate Bench of this Court (The Gorkhaland Territorial Administration & Ors. Vs. Thinley Bhutia & Ors.).

4. The learned counsel has further submitted that there is no reason why the same principles of law as laid down in the above decision will not be applicable in case of the respondent/writ petitioner, an assistant teacher who was appointed on contractual basis during subsistence of vacancy in the sanctioned post.

5. The learned counsel appearing for the appellant has vehemently opposed the above submission of the respondent/writ petitioner. According to her, the decision in MAT 170 of 2023 was in respect of

non-teaching staff who were appointed in several schools against the permanent sanctioned vacant post, but the same was not the case here.

6. We have considered the rival submission of the learned counsels of the parties and also the decision of the Hon'ble Co-ordinate Bench in MAT 170 of 2023 wherein Section 26 of the GTA Act, 2011 and also the relevant notifications were taken into consideration. It is true that the present petitioner is an Assistant Teacher of a government aided school which is used to receive grants from the State Government from time to time. In this regard, the Hon'ble Co-ordinate Bench has been pleased to distinguish between government-run schools and government aided schools. The relevant paragraphs of 16 and 17 (MAT 170 of 2023) may be quoted herein below:-

“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.”

7. We do not find any cogent reason to differ with the reasons given by the Hon’ble Co-ordinate Bench since, in our view, the principles as espoused in the said decision are also be applied in respect of the respondent/writ petitioner, an assistant teacher appointed on temporary basis in a government-aided school, during subsistence of vacancy in the permanent sanctioned post; otherwise the equality clause as enshrined in Article 14 of our Constitution will be seriously infringed. We have no doubt that as the respondent/writ petitioner was appointed temporarily on the vacancy of permanent posts in a government aided school, no official sanction or approval from the State Government is necessary. In view of the above, we do not find any merits in the present appeal. Accordingly, the same is dismissed. No order as to costs. The impugned judgment passed by the Learned Single Judge in WPA 727 of 2023 is hereby affirmed.

8. The CAN 2 of 2024 being infructuous is disposed of accordingly.
9. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(HARISH TANDON, J.)

(APURBA SINHA RAY, J.)