

S/L 20
08.01.2025
Court. No. 3
Suwayan

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

WPA 12 of 2025

**Swarup Thapa
Vs.
Gorkhaland Territorial
Administration Council & Ors.**

*Mr. Ekramul Bari
Mr. Sk. Imtiaj Uddin
Ms. Rishita Chakraborty*

....for the petitioner.

*Ms. Supriya Singh
Mr. Vivek Saha*

....for respondent/GTA.

*Mr. Subir Kumar Saha
Ms. Pratusha Dutta Chowdhury*

....for the State.

Mr. S.S. Mondal

....for the School Authority.

1. The affidavit of service as filed on behalf of the petitioner is taken on record.
2. The writ petitioner, the respondent No.1, i.e., Gorkhaland Territorial Administration Council (GTA in short) and the respondent/State and its functionaries being respondent Nos.2 to 6 are represented by their respective counsels.
3. By filing the instant writ petition under Article 226 of the Constitution of India, the writ petitioner has prayed for issuance of appropriate writ against the respondent authorities more specifically against the respondent No.1 i.e., GTA Authority to approve the appointment of the writ petitioner as an Assistant

Teacher (Economics) in the school of the respondent No.6.

4. In course of his submission Mr. Bari, learned advocate for the writ petitioner at the very outset draws attention of this Court to the page no.16 of the instant writ petition being a photocopy of the appointment letter dated 09/04/2015 as issued by the Secretary of the respondent No.6 to the writ petitioner whereby and whereunder the writ petitioner was appointed as an Assistant Teacher in the school of the respondent No.6. Materials have been placed before this Court that the writ petitioner joined the said school on 13/04/2015. It is the further case of the writ petitioner that since his joining the appointment of the writ petitioner was not regularised and thus finding no other alternative the petitioner has approached this Court by filing the instant writ petition.
5. In course of his submission Mr. Bari submits before this Court that the issue as involved in the instant writ petition was the subject matter of various writ petitions before various co-ordinate Benches of this Court wherein various co-ordinate Benches of this Court granted similar relief to the writ petitioners as prayed for by the writ petitioner in the instant writ petition.
6. In course of his submission Mr. Bari placed his reliance upon the following three unreported

decisions namely, (1) the judgment and order dated 04/11/2022 as passed in WPA 1181 of 2021 (Thinlay Bhutia & Ors. vs. Gorkhaland Territorial Administration Council & Ors.) as passed by a Single Bench of this Court, (2) the judgment dated 16/08/2024 as passed in MAT 170 of 2023 (The Gorkhaland Territorial Administration & Ors. vs. Thinley Bhutia & Ors.) as passed by a Division Bench whereby and whereunder the order and judgment dated 04/11/2022 as passed in WPA 1181 of 2021 was affirmed, (3) the judgment and order dated 08/11/2024 as passed in WPA 2320 of 2024 (Bishal Thapa vs. Gorkhaland Territorial Administration Council, Lalkuthi & Ors.) as passed by another co-ordinate Bench.

7. It is thus submitted by Mr. Bari that appropriate relief may be granted to the writ petitioner while disposing of the instant writ petition.
8. Learned advocates appearing on behalf of the GTA Authority and respondent/State submitted before this Court that an appropriate order may be passed considering the merit of the instant writ petition.
9. After careful consideration over the materials as placed before this Court and after hearing the learned advocates for the contending parties and also after giving due thought over the judgments as passed by different co-ordinate Benches and the Division Bench as quoted supra it appears to this Court in the

District of Darjeeling the West Bengal School Service Commission Act, 1997 (hereinafter referred to as the said Act, 1997) was not given effect to. Accordingly, after establishment of GTA pursuant to the provisions of Gorkhaland Territorial Administration Act, 2011, the employment of teaching and non-teaching staff in various Government aided schools remain suspended.

10. Materials have been placed before this Court that subsequent to the promulgation of the said Act of 1997, DI of Schools (DGHC) Darjeeling was directed by a memo dated 16/09/2010 by the Secretary, Education Department, DGHC-Darjeeling to follow the usual procedure for appointment of non-teaching staff in the Secondary schools under DGHC till the constitution of School Service Commission in the said district.
11. At this juncture this Court proposes to look to the paragraph Nos.5 and 6 of the judgment dated 08/11/2024 as passed in the case of Bishal Thapa (supra) and the same is quoted hereinbelow in verbatim:

“5. 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.

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 Kharke). 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 the government aided school during the subsistence of vacancies in the permanent sanctioned post no official sanction or approval from the State Government is necessary.”

12. On perusal of the judgment as passed in the case of WPA 1181 of 2021 [Thinlay Bhutia (supra)] and the Appellate Court’s judgment as passed in MAT 170 of 2023 it reveals to this Court that in a similar situation a co-ordinate Bench directed the GTA authority to regularise the appointment of the writ petitioner in the said writ petition subject to fulfillment of criteria of eligibility of the said writ petitioner after following the procedure adopted by them as mentioned in the said judgment. As rightly pointed out by Mr. Bari that the said judgment was upheld by a Division Bench while disposing of MAT 170 of 2023.
13. On careful consideration of the entire scenario as discussed supra if I look to the factual aspects of this case it appears to this Court that admittedly at the time of issuing of appointment letter to the writ petitioner the said Act of 1997 was not given effect to in the District of Darjeeling and, therefore, the appointment of the present petitioner as granted by the Secretary of the respondent No.6/school cannot be considered to be illegal pursuant to the decision of the co-ordinate Bench as well as the Division Bench

as mentioned supra. Considering the entire aspect as placed before this Court, this Court has no hesitation to hold that that office order dated 05/09/2024 as issued by the GTA authority regularising the service of Group-C and Group-D staff in different schools under GTA applies *mutatis mutandis* in respect of the teaching staff under GTA more specifically who have been appointed by the Managing Committee of the said school under GTA against sanctioned post and having requisite qualification as has been held by a Division Bench of this Court in MAT 203 of 2023 (The Gorkhaland Territorial Administration & Anr. vs. Ajay Kumar Kharka) as disposed of on 13/09/2024.

14. In view of the discussion made hereinabove and in absence of any contrary material that the present writ petitioner has not been appointed against any sanctioned post and/or he has got no requisite qualification for appointment to the post to which he was appointed. This Court while disposing of the instant writ petition directs the respondent No.2 i.e., Executive Director, Education Department, GTA as well as the respondent No.5 i.e., The District of Schools (S.E.), Darjeeling, to grant approval to the appointment of the writ petitioner after verifying the eligibility criteria of the writ petitioner as well as after verifying the availability of the sanctioned post at the time of initial appointment of the writ petitioner.

15. The entire exercise as indicated in the foregoing paragraph is to be completed both of the respondent No.2 and 5 within eight weeks from the date of communication of this order.
16. Learned advocate for the respondent No.1 and 2 and learned advocate for the respondent/State are requested to communicate the server copies of this order to the respondent Nos. 2 and 5 respectively forthwith for their immediate compliance.
17. Both the respondent Nos. 2 as well as respondent No. 5 are directed to act on the server copy of this order.
18. With the aforementioned observation the instant writ petition being **WPA 12 of 2025** is disposed of.
19. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Partha Sarathi Sen, J.)