

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
(MANDAMUS APPEAL)
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

M.A.T. 129 of 2023

Dipak Biswas

Vs.

State of West Bengal & Ors.

For the appellant : Mr. Rudranil De,
Mr. Debojit Kundu

For the State respondents : Mr. Hirak Barman,
Ms. Bedashruti Bose

Judgment on : 1st May, 2025

Madhuresh Prasad, J.:

1. The issue arising for consideration in the present appeal is whether the petitioner/appellant is entitled to the benefits under memorandum dated 23.12.2019 issued by the Joint Secretary to the Government of West Bengal in the Higher Education Department. The memorandum was issued to grant a consolidated pay as a result of restructuring of service conditions of government approved Part Time Teachers (PTTs), government approved Contractual Whole Time Teachers (CWTTs) and Guest Teachers engaged in different

government/government aided colleges in the State of West Bengal up to 13.07.2019.

2. The writ petitioner approached this Court earlier claiming benefits under the memorandum dated 23.12.2019, by filing writ petition bearing number W.P.A. 454 of 2022. The writ petition was disposed of on 07.03.2022 directing the respondents to pass a reasoned order on the claim of the petitioner under due intimation to the petitioner. The order was to be passed based on documents available in the office of the Director of Public Instructions ("DPI" for short). The DPI passed a reasoned order on 22.07.2022 holding the petitioner not entitled to any benefit of the memorandum dated 23.12.2019.

3. The reasoned order was assailed by the petitioner in the writ proceedings arising out of W.P.A. 2222 of 2022. The Hon'ble Single Judge vide judgment dated 24.07.2023 has dismissed the writ petition, which is under appeal in the present proceedings.

4. The learned counsel for the writ petitioner/appellant submits that the memorandum dated 23.12.2019 was issued with the view to restructure the service conditions and nomenclature of PTTs, CWTTs and Guest Teachers. The memorandum dated 23.12.2019 contemplated restructuring of service conditions of such teachers, engaged by any nomenclature in the different government/government aided colleges. The memorandum dated 23.12.2019 did not have a hard and fast stipulation that only such Part Time or Contractual Teachers who have been engaged as per the

three nomenclatures (PTTs, CWTTs and Guest Teachers) were to be beneficiary of the memorandum dated 23.12.2019. The nomenclature was explicitly irrelevant for the purposes of availing benefit under the memorandum dated 23.12.2019.

5. Having made such submission he draws attention of the Court towards the advertisement issued by the Officer-in-Charge ("OIC" for short) of the Acharya Bojendra Nath Seal College, (College for short) Cooch Behar for appointment of Teaching cum Learning Assistants and Library Project Assistants cum Data Entry Operator pursuant to which the petitioner was appointed. The appointment process was by a walk in interview to be conducted on 22.06.2018. The petitioner participated in the said walk in interview and emerged successful therein. The OIC thus issued a letter dated 18.07.2018 intimating the petitioner that he was selected as Teaching cum Learning Assistant ("TCLA" for short) in the Department of Education at the college.

6. The petitioner thereafter was required to take classes in the college, conduct invigilation duty during examinations and also to evaluate answer sheets. It is submitted by the learned counsel for the appellant that having regard to the nature of duties performed by the petitioner, he was entitled to be considered as an equivalent to a "Guest Teacher". He was thus entitled to benefit of the consolidated pay and nomenclature contemplated under the memorandum dated 23.12.2019.

7. The claim, however, was rejected by the Hon'ble Single Judge relying upon the reasoned order dated 22.07.2022 passed by the DPI. The Hon'ble Single Judge has failed to consider the fact that the petitioner was a founder teacher of the Department of Education in the college. He has discharged the duties of a teacher ever since, because there was no regularized Full Time Teacher. Even Part Time Teacher was not available in the age group of 60 to 65 years in the remote place where the college is situated. Under such circumstances he had discharged the duties of a teacher in the college which fact is borne from a certificate of performance issued by the OIC on 08.02.2021.

8. The Hon'ble Single Judge in paragraph 21 of the impugned judgment has considered the petitioner's appointment to be funded by a registered trust founded as per recommendation of the NAAC, whereas the report of the Principal is clear to the effect that the college is run by the government.

9. It is further submitted that earlier in these proceedings this Court had called upon the respondent no. 6 to submit a report containing answer to certain queries raised by the Court. The report dated 09.09.2024 has been submitted by the respondent no. 6 (the Principal of the college in question). From bare perusal of the report it is evident that the petitioner imparted learning to the students and that he was taking classes. The same is obvious from the Principal's response to query no. g of the report. From bare perusal of answer to query no. b of the report dated 09.09.2024 it is also obvious that the

college in question is controlled and maintained by the government and that there is no private body involved in running the college. He thus submits that the reasons assigned by the Hon'ble Single Judge to reject the petitioner's claim is unsustainable.

10. The learned counsel for the State on the other hand submits that a bare perusal of the memorandum dated 23.12.2019 issued by the Joint Secretary to the Government of West Bengal in the Higher Education Department reveals the fact that the same is intended to restructure the service condition and other benefits of "government approved" PTTs, CWTTs and Guest Teachers by any nomenclature. In support of such submission, he lays great emphasis on the opening paragraph of the memorandum dated 23.12.2019 which reads as follows:

"

Memorandum

The matter of restructuring of service conditions and other benefits for **Government approved** (emphasis ours) Part Time teachers (PTTs), Government approved Contractual Whole time teachers (CWTTs) and Guest teachers, in any nomenclature, engaged in different Government/Government aided colleges in the State of West Bengal up to 13.07.2019, was under active consideration of the State Government for sometimes past. After careful consideration of the matter, the Governor is hereby pleased, in supersession of all previous orders in this regard, to restructure the service conditions along with the change of nomenclature of the aforesaid category of teachers commensurate with their qualifications and period of service rendered in the following manner:"

11. He further submits that from bare perusal of petitioner's appointment order it is explicit that he was selected as a TCLA and not PTT, CWTT or Guest Teacher. His selection was for only one academic session 2018-19 and the remuneration was to be paid to

the petitioner on a “per class basis”. The appointment was made by the OIC without any government approval whatsoever. In fact the OIC, who has made the appointment, himself in his report dated 08.01.2020 has stated:

“ **Report**

.....
.....

- Teaching cum Learned Assistant are remunerated per class basis and this remuneration is changeable in upward direction if the source of the fund permits to do so. The source of the remuneration is the Acharya Brojendra Nath Seal College Parent-Teacher Association (ABNSCPTA), which is a Registered Trust. This was formed following the recommendation of NAAC Peer Team relating to 1st cycle NAAC visit in the year 2007. (Enclosure: 02)
- Sri Apu Sutradhar and Sri Dipak Biswas are the two Teaching cum Learning Assistants in the Department of Philosophy and the Department of Education respectively.

.....
.....”

12. Keeping in view the nature of the petitioner’s temporary appointment, his claim that he has been assigned classes, invigilation or paper evaluation work does not in any way better the petitioner’s status or claim. The claim of the petitioner has to be considered in terms of the memorandum dated 23.12.2019 under which he claims the benefit. The memorandum is applicable only to Government approved PTTs, CWTTs, and Guest Teachers by any nomenclature. The petitioner was not a government approved appointee and, therefore, he cannot claim any benefit of the memorandum dated 23.12.2019.

13. On consideration of the rival submissions we find force in submissions of the learned counsel for the State. The aim and object

of the memorandum dated 23.12.2019 issued by the Joint Secretary to the Government of West Bengal in the Higher Education Department is clear as is manifest from its opening paragraph, extracted above. In unambiguous terms the memorandum states that restructuring of the service conditions is only for government approved PTTs, CWTTs and Guest Teachers by any nomenclature. The petitioner on the other hand is a TCLA appointed by the OIC on 'per class' basis and paid out of funds from the College Parent-Teacher Association, which is a registered trust. The petitioner was never appointed as a government approved PTT, CWTT or Guest Teacher by any nomenclature whatsoever. The petitioner, therefore, is not in a position to claim the benefit of the memorandum dated 23.12.2019. The fact that petitioner may have been asked to discharge invigilation duties or paper evaluation duties will not alter the status of the petitioner so as to bring him within the scope and object of the memorandum dated 23.12.2019 issued by the Joint Secretary to the Government of West Bengal in the Higher Education Department. He would continue to be a TCLA.

14. Insofar as the report of the Principal submitted pursuant to the earlier order dated 22.08.2024 passed in these proceedings, we do not find that the same enures to the petitioner's benefit. The fact that the college in question is run by the government does not improve the claim of the petitioner. It does not change the fact that the petitioner's engagement as TCLA by way of a walk in interview was not a government approved appointment and not against any

sanctioned post. The petitioner was never a government approved appointee of the college in question. It is also an admitted position that after the year 2021 the petitioner has not been working as a TCLA.

15. The concept of TCLA has also been explained by the respondent no. 3 in paragraph 12 of the affidavit in opposition wherein it is stated that the Internal Quality Assurance Cell (IQAC) of the college conceptualizes the TCLA and the source of remuneration is the College Parent-Teacher Association which is a registered trust. The same was done on recommendation of the NAAC Peer Team. The respondents have clearly denied any funds to be paid to the TCLA by the college.

16. In so far as the petitioner's claim that he is equivalent to Guest Teachers, this Court finds that the DPI has considered this claim also in his reasoned order dated 22.07.2022. He had taken note of the fact that in government colleges only retired or serving university/college teachers could be engaged as Guest Teachers. The petitioner has not pointed out any provision to the contrary. Thus petitioner's claim for parity with Guest Teacher is unsustainable.

17. These Assistants have been used to assist and facilitate clear instruction. They assure that the students are engaged in discussion, promote useful dialogue; and also provide feedback to the instructors on the understanding of the students. They have been used to facilitate group work and to upgrade voluntary oral assessment offered prior to exam. Even if it is accepted that they have been asked

to discharge other duties such as taking some online classes or physical classes under supervision of the heads of the department, invigilation or evaluation work, the same would not make the TCLA (petitioner) a government approved PTT, CWTT or Guest Teacher as contemplated under the memorandum dated 23.12.2019.

18. The petitioner's claim for being extended the benefits of the memorandum dated 23.12.2019 issued by the Joint Secretary to the Government of West Bengal in the Higher Education Department has thus rightly been rejected by the DPI by the impugned reasoned order dated 22.07.2022. The DPI in the reasoned order has considered the status of the petitioner as a TCLA, being distinct from a government approved PTT, CWTT or Guest Teacher. The DPI has taken into consideration the modus of petitioner's appointment by the registered trust of Parent-Teacher Association, the fact that payment of remuneration on a per class basis has been done by this trust; and after such detailed consideration the reasoned order has rightly found the petitioner not to be entitled to benefit of the memorandum dated 23.12.2019.

19. The reasoned order of the DPI dated 22.07.2022, therefore, requires no interference. We, therefore, have no hesitation in concluding that the writ petition claiming the benefit of the memorandum dated 23.12.2019 was fit to be dismissed. We find no reason to interfere with the judgment of the Hon'ble Single Judge dated 24.07.2023 dismissing the petitioner's writ petition bearing number W.P.A. 2222 of 2022.

20. The appeal is accordingly dismissed.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

B.K.N.
A.R. (Court)