

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

**Present :
The Hon'ble Mr. Justice Arindam Mukherjee:**

WPA 1271 of 2024

**SAILENDRA TAMANG & OTHERS.
Vs.
THE STATE OF WEST BENGAL & OTHERS.**

For the Petitioners:- Mr. Biswaroop Bhattacharya,
Mr. Pritam Chaudhury,
Mr. Subham Chanda

For the State:- Ms. Bedashruti Bose
Mr. Sumit Kumar

For GTA Mrs. Supriya Singh

Heard on : 19.11.2024.

Judgement on : 22.05.2025.

Arindam Mukherjee, J. :-

1. The petitioners were appointed as Assistant Teachers in Primary Schools purely on contract basis and was subsequently upgraded to ad hoc Assistant Teachers in their respective schools in sanctioned vacant post within the Education Department of Gorkhaland Territorial Administration (in short 'GTA'). The name of the petitioners and their respective date of joining are stated herein below:-

Sl. No.	Name of the Petitioners	Date of Joining	Present School	Previous School
1	SAILENDRA TAMANG	10.03.2002	SANGSER C.P. PRY	
2	NAMITA MOKTAN	12.07.2004	KASHYAM JR BASIC	SOURENI BUSTY JR. BASIC
3	PRAMOD KHAWAS	01.11.2002	KUMAI T.E. PRY	
4	SUBASH SUBBA	11.02.2002	SANGSEER C.P. PRY	
5	RAJU LAMICHANEY	01.11.2004	LAVA PRY	
6	ANIL RAI	03.09.2004	KAFFER PRY	
7	LAXMI CHETTRI	01.08.2007	DALIM PRY	MAILE JR BASIC
8	SURESH RAI	05.10.2002	KAMESHU F.V. PRY	
9	DHANMAYA RAI	15.11.2002	TANGTA PRY	
10	LEELA RAI	01.01.2004	LOWER LADAM PRY	
11	MENUKA SHARMA	03.09.2004	DELEP JR PRY	DONG SARDA PRY
12	SABINA MUKHIA	01.10.2007	KIPA PRY	
13	VIDYA JYOTI CHETTRI	17.08.2007	KUMAI FACTORY LINE	
14	KABITA PRADHAN	09.09.2009	PRINGTAM PRY	
15	JINAM SUBBA	11.02.2002	SANGSER C.P. PRY	
16	CHANDRIKA RAI	04.02.2002	UPPER SANTOOK PRY	LOWER SANTOOK PRY
17	PREMET LEPCHA	03.09.2004	YANGRI PRY	
18	MENUKA RAI	01.10.2007	KOLBONG PRY	
19	BASANTI CHETTRI	01.09.2004	SANTHER JR BASIC	
20	SITA DEVI KHAREL	04.10.2004	PRINGTAM JR BASIC	
21	LAL BAHADUR CHETTRI	08.10.2007	BEECH KAGAY PRY	
22	BHANU PRADHAN			
23	BHANU TAMANG	03.09.2004	REON DABLING PRY	
24	SANTOSH TAMANG	03.09.2004	KAMJER PRY	
25	MUNU BHUJEL	12.09.2009	GUMBADARA PRY	
26	MANJU SHERPA	15.09.2002	CHISANG PRY	
27	TSHERING DENKA BHUTIA	01.06.2004	SINGTAM TRIBLE PRY	
28	MRIDULA TAMANG	01.11.2004	DALEP PRY	CHATTER BUDDI PRY

29	RAM KUMAR SUBBA	07.09.2004	RATAY PRY	
30	SANU MAYA GURUNG	20.11.1999	MINE PRY	
31	ANJUNA LEPCHA	03.09.2004	BARBOT PRY	NIMBONG PRY
32	SHARMILA GURUNG	03.09.2004	MULPALA PRY	
33	BIMAL DAS RAI	01.10.2007	DUKA PRY	

The petitioners say that they have been rendering service in their respective schools continuously since then.

2. It is also the case of the petitioners that the said schools were recognized as new set up, and as such the posts of teaching and non-teaching staff are deemed to have been granted as without such sanction, the school could not function. The petitioners are seeking regularization of their services.
3. In the short report filed by the District Inspector of Schools (Primary Education), Darjeeling who is also the Secretary of the District School Board, it has been stated that as the service of the petitioners are not regularized as permanent regular teachers in different primary schools under District School Board, Darjeeling, GTA and as no TET Examination for Primary Teachers' Recruitment is held in the GTA area like other region of West Bengal. The petitioners move the Hon'ble High Court of Calcutta. (Circuit Bench at Jalpaiguri) vide **WPA 1307 of 2021 (John Rai & Ors. Vs. GTA & Ors.)** where the Hon'ble High Court had directed the District Inspector of Schools (Primary Education), Darjeeling

on 04.01.2022 and 11.01.2022 to consider the matter of regularization of the service of the petitioners in accordance with the established principles of equality and fair play.

4. Accordingly, the District Inspector of Schools (Primary Education) had verified all the documents of the petitioners and had sent the list of the petitioners who fulfils the criteria of becoming regular primary teachers in terms of the West Bengal Primary Teachers' Recruitment Rules, 2016 to the Executive Director, Dept. of Education, GTA for regularization as at that time there was no Chairman/president in the District School Boards in Darjeeling who is the appropriate authority for regularization/recruitment of teachers. The order dated 20.08.2022 by the District Inspector of Schools, Darjeeling found that there are 860 number of posts of primary teachers lying vacant under the District School Board, GTA, Darjeeling. The said report also suggests that the petitioners are working already in sanctioned vacant post and they are not the new recruitment of the Government.
5. 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 joining dates of appointment.

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 ***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. 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 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. 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. The order dated 28.02.2022 at page 104 of the writ petition passed by the District Inspector of Schools (Primary Education), GTA, Darjeeling quotes the following:-

“Accordingly, as per the direction of the Hon’ble High Court at Calcutta (Circuit Bench at Jalpaiguri) the petitioners were summoned at the Office of the District School Board, Darjeeling on 31.01.2022 vide issuing letter being Memo No. 2022/1C-22/DSB/GTA/Dj. dt. 21/01/2022 to each of them for verification of original documents which were found genuine after verification and accordingly An Annexure-(J) has been prepared.

On further verification of office record it has been found that there are 860 nos. posts of Primary Teachers lying vacant under District School Board, GTA, Darjeeling.

In view of above fact and compliance of the order of Hon’ble High Court at Calcutta (Circuit Bench at Jalpaiguri) the petitioners listed in

Annexure – (J) copy enclosed herewith, can be considered as a regular Primary Teacher who fulfils the criteria in terms of West Bengal Primary Teachers Recruitment Rules, 2016 vide Memo No. 190-SE/EE/10M-06/2009 (pt) dated the 2nd March, 2016 and RTE Act 2009”

**The RTE Act 2009 (supra) should be read as “Right of Children to Free and Compulsary Education Act, 2009.*

9. 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 vs. 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 like 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)**.
10. In the aforesaid facts and circumstances, I have no hesitation in directing the respondents no. 2, 3 and 4 to regularize the service of the petitioners provided he has been appointed on temporary basis against a permanent sanctioned post. The Gorkhaland Territorial Administration, Department of Education, and in particular the respondent nos. 2, 3 and

4 shall first ascertain the number of sanctioned permanent post in respect of non-teaching staff in schools wherein the petitioners were appointed or subsequently transferred and then find out whether such permanent vacancies have been filled up. If the permanent vacancies of non-teaching staff in the said school have not been filled up then, the respondent no. 2, 3 and 4 shall issue necessary direction and documents to regularize the service of the petitioners 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, which I have already held should be applicable in respect of non-teaching staff.

11. The entire exercise should be completed within a period of eight weeks from the date of communication of a server copy of this order.
12. The parties including the respondent nos.2, 3 and 4 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.
13. Nothing further remains to be adjudicated in this writ petition. The same is accordingly disposed of.

14. Since I have not called for any affidavit, allegations contained in the writ petition are deemed to have not been admitted by the respondents.
15. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance with the requisite formalities.

(Arindam Mukherjee, J.)