

08.7.2025
Sl. No.**35**
Court no.IV
nb

CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI

WPA 1292 of 2025

Kamal Kumar Kharga & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Ekrumul Bari,
Sk. Intiaj Uddin,
Mr. Rishav Das,
.... for the petitioners.

Ms. Supriya Singh,
.... for the respondent/GTA.
Mr. B. Bose,
Ms. Rima Sarkar,
.... for the State.

The writ petitioners participated in the regional level selection test conducted by the School Service Commission in the year 1998 in the Hilly Region and emerged successful.

The petitioners were then empanelled for the post of Assistant Teachers. However since no step was taken to provide appointment to the petitioners, the petitioners approached this Court by filing a writ petition being W.P. No.15601W) of 1999. The said writ petition was disposed of by an order dated December 20, 1999 directing the respondents to comply with the formality of filling up of vacancy from the select list of

1998 in respect of hilly areas within four weeks from the date of communication of the said order.

The petitioners were thereafter issued appointment letter by the School Authorities. The petitioners' appointments were subsequently approved by the District Inspector of Schools(SE), GTA.

The petitioners submit that despite being empanelled for the post of Assistant Teacher in the year 1998 as aforesaid they got appointment only in later years due to pendency of court cases and not for any fault on the part of the petitioner.

Since the petitioners were not at fault and they are entitled to the notional benefits pertaining to their services, therefore, they requested the District Schools(SE) Department of Education, GTA to grant notional benefits in respect of their service from the date of their empanelment. Such representations are still pending for consideration and as such, the petitioners have approached this Court by filing the instant writ petition.

Mr. Bari, learned counsel appearing for the petitioner relies on a judgment of a Co-ordinate Bench of the Court in the case of *Suman Rai & Ors. Vs. The State of West Bengal & Ors. in WPA 933 of 2024* and a judgment of the Hon'ble Division Bench of this Court in the case of *State of West Bengal and Ors. Vs. Sumohan Mondal & Ors.(MAT 1211 of 2019)* in support

of his contention that in a similar fact situation, the Court has directed notional benefits to be extended to persons who approached the Court therefor.

Learned Additional Advocate General representing the State and Ms. Supriya Singh, learned counsel appearing for the GST seek time to file affidavit-in-opposition on behalf of the respondents in order to demonstrate that the petitioners are not entitled to the said benefits inasmuch as there is no extant rule/provision for grant of notional benefit to employees of Primary School Teachers.

The learned Additional Advocate General also relies on a notification dated September 4, 2024 issued by the Additional Secretary to the Government of West Bengal, School Education Department to buttress his contention that since there is no extant Rule or provision for grant of notional benefit the same cannot be granted to the petitioners. A Copy of the said notification has been handed up to Court. Let the same be kept on record.

Mr. Bari, learned counsel appearing for the petitioners submits in reply that the contention that there is not extant rule or provision has been duly considered by this Court while delivering judgment in the case of *Suman Rai(Supra)*.

He further submits that both the cited cases have considered the aspect of grant of notional

benefits and it was then held that mere non-existence of any provision for grant of notional benefit cannot stand in the way of grant of such benefits.

Having heard learned counsel appearing for the parties and having considered the material on record, this court of the view that given the nature of the grievance raised by the petitioners no purpose would be served by keeping the writ petition pending and directing exchange of affidavits. In the considered view of the Court, since the Gorkhaland Territorial Development Administration (hereafter "GTA") Authority exercises control and power over matters pertaining inter alia to education in terms of Section 26 of the GTA Act, 2021, the issue as to whether the petitioners are entitled to get notional benefits or not should be decided by the GTA authority itself at the first instance.

In such view of the matter, the respondent no.4 being the Executive Director, Education Department GTA is directed to consider the petitioners' case and take a decision as to whether the petitioners are entitled to get notional benefits in the light of the judgments of the Hon'ble Court cited herein above. The said Authority shall afford an opportunity of hearing to the petitioners before taking a decision and shall pass a reasoned order thereafter. In case, the said authority finds that the petitioners are similarly

circumstanced as the petitioners in the aforesaid cases decided by this Court (as cited hereinabove), the said Authority shall extend the notional benefits to the petitioner as expeditiously as possible and positively within a period of four weeks from the date of such decision of the said authority.

Urgent certified photo copy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)