

Form No. J (1)

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
(CONSTITUTIONAL WRIT JURISDICTION)

Present:

The Hon'ble Justice Biswajit Basu.

WPA 1089 of 2023
with
I.A. CAN 06 of 2023
I.A. CAN 07 of 2023
JASHIMUDDIN MONDAL & ORS.
Vs.
THE STATE OF WEST BENGAL & ORS.
with
WPA 1162 OF 2025
TRAINED UNEMPLOYED YOUTHS WELFARE ORGANISATION & ANR.
Vs.
THE STATE WEST BENGAL & ORS.

For the Petitioners: Mr. Bikash Ranjan Bhattacharyya,
Mr. Samim Ahmed,
Mr. Arka Maity,
Mr. Ambiya Khatun.

For the State : Mr. Sirsanya Bandyopadhyay,
Mr. Debopriyo Karan,

For GTA : Mr. Joydip Kar,
Mr. Pijush Biswas,
Mr. Regan Llama,
Mr. Tamoghna Pramanick.

For the WBCSSC : Dr. Sutanu Kumar Patra,
Mrs. Supriya Dubey.

For the WBBSE : Ms. Koyeli Bhattacharyya,
Mr. Bibek Dutta.

For the added respondent: Mr. Biswaroop Bhattacharya.
nos. 9-12 and 133 - 294 Ms. Neelanjana Ghorui.

Principle Secretary, School Education Department, Government of West Bengal.

2. The petitioners are alleging large scale corruption in the said regularization of such teachers. The State, in its affidavit has disclosed that the regularization of the engagement of the said 313 voluntary teachers was approved only in-principle but without waiting for the final approval of the State, the engagement of those teachers was regularised. In view of such stand of the State, the challenge to the said letter dated March 08, 2019 is taken up for disposal first, keeping the other issues involved in the writ petitions pending for consideration later.

The argument of the learned counsel for the parties on the said challenge is recorded *in seriatim* herein below:-

3. Mr. Bikash Ranjan Bhattacharyya, learned senior counsel for the petitioners:-

- i. The Executive Director of the GTA by a memo bearing No. 302(899)/GTA-EDCN/2017-2018 dated June 25, 2018 had communicated to all Headmistress/Headmaster/Head Teacher of all secondary, primary and upper primary level of schools under the GTA that it came to the notice of the authority that in many cases, the persons have been engaged as voluntary teachers without having requisite qualifications whimsically and in violation of the Order No. 01/I-2/EDN/DGHC/2010-11 dated July 30, 2010 of the Secretary, Education Department of DGHC, such

engagement of voluntary teachers is in contradiction of the mandates of the Government of West Bengal and other appropriate authorities, henceforth such engagements would be considered as the personal liability of the Head of the Institution and its Managing Committee. In spite of such caution, voluntary teachers were engaged and their engagements have been regularized without following any selection process. The petitioners therefore are praying that the engagement and regularization of the appointment of such teachers in GTA area be investigated by any independent agency and all appointments made after the aforementioned order dated July 30, 2010 be set aside.

- ii.** The State, in its affidavit-in-opposition to the writ petition, has disclosed that the appointment of 469 volunteer teachers were regularised by the Government through Cabinet approval. The communication dated March 08, 2019 discloses that the Government has taken a decision to regularise 313 more volunteer teachers. The State in the said affidavit has categorically stated that the State had principally decided to regularise the appointment of the 313 volunteer teachers but before any final decision in this regard by the Cabinet or by the Finance Department can be made, the District Inspector of Schools Darjeeling had approved such regularisation, the State therefore is not supporting the appointments of all the said volunteer teachers.

In view of the aforesaid stand of the State, the petitioners intend to press the issue of legality and propriety of regularization of appointment of said 313 voluntary teachers first.

- iii.** The West Bengal School Service Commission Act, 1997 (hereinafter referred to as '***the said Act of 1997***' in short) came into force with effect from April 01, 1997 to provide for the constitution of Regional School Service Commission and Central School Service Commission in West Bengal and for matters connected therewith and incidental thereto. Section 7 thereof mandates that notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary, it shall be the duty of the Regional Commission to recommend persons for appointment to the posts of teachers or non-teaching staff in schools within its territorial jurisdiction under the supervision and control of the Central Commission on the basis of the result of the State Level Selection Test conducted by the Central Commission.
- iv.** The provisions of the said Act of 1997 prescribe a complete mechanism for appointment of teachers in government aided and sponsored schools and mandate adherence of such prescription but the said voluntary teachers not only were engaged in violation of the said order dated July 30, 2010 but regularization of their such engagement, admittedly has been made without following any

known selection process. The Hon'ble Supreme Court in the case of **STATE OF ODISHA AND OTHERS vs. SULEKH CHANDRA PRADHAN AND OTHERS** reported in **(2022) 7 Supreme Court Cases 482** has held that the appointments made in contravention of the statutory provisions are *void ab initio*.

- v. The Hon'ble Supreme Court has consistently held that adherence to the rule of equality in public employment is a basic feature of the Constitution and courts cannot approve appointments made outside the constitutional scheme. Reliance has been placed on the decision of the Hon'ble Supreme Court in the case of **SECRETARY, STATE OF KARNATAKA AND OTHERS vs. UMA DEVI AND OTHERS** reported in **(2006) 4 Supreme Court Cases 1** to contend that any public employment must be in accordance with constitutional requirements of equality of opportunity and cannot be regularized when initially made without advertisement, competition or adherence to the Rules. It has been categorically held in the said decision that regularization in violation of Articles 14 and 16 of the Constitution amounts to perpetuating an illegality and denies opportunity to all eligible candidates who did not get a chance to compete.
- vi. The NCTE regulations issued under the NCTE Act, 1993 lay down the minimum academic and training qualifications required for appointment of a teacher across India. The GTA in its

supplementary affidavit affirmed on April 29, 2025 has disclosed the particulars of the said 313 voluntary teachers alongwith the year in which the said teachers had acquired the B.Ed. qualification(s), wherefrom it would appear that none of the said teachers had the minimum requisite qualification prescribed under the NCTE Regulations, 2001 and 2014 at the time of their initial engagement as such, the said initial engagements of all the 313 voluntary teachers were *void ab initio*.

- vii.** The Hon'ble Supreme Court, in the case of ***DISTRICT COLLECTOR & CHAIRMAN, VIZIANAGARAM SOCIAL WELFARE RESIDENTIAL SCHOOL SOCIETY, VIZIANAGARAM AND ANOTHER vs. M. TRIPURA SUNDARI DEVI*** reported in **(1990) 3 Supreme Court Cases 655** has held that it amounts to a fraud on the public to appoint persons with inferior qualifications and in the case of ***STATE OF UTTAR PRADESH AND ANOTHER vs. ANAND KUMAR YADAV*** reported in **(2018) 13 Supreme Court Cases 560** has held that no appointment is permissible without having the minimum qualification prescribed by the NCTE in its notification dated August 23, 2010, regularization of the appointments cannot cure such illegality.
- viii.** No advertisement was issued to engage the voluntary teachers at the schools in the GTA area. No recruitment procedure was followed to engage such teachers, rather the said engagements

were in contravention of the prohibition notified by the DGHC itself on July 30, 2010. The entire procedure to engage the voluntary teachers in the said schools violates the provisions of the Articles 14 and 16 of the Constitution. The Hon'ble Supreme Court in the case of **UNION OF INDIA AND OTHERS vs. KISHAN GOPAL VYAS** reported in **(1996) 7 Supreme Court Cases 134** has held that the person wrongly appointed is not entitled to regularization.

- ix.** A procedure unknown to law was devised in February-March 2017 for the purpose of regularizing the engagement of ineligible voluntary teachers. The State, on February 06, 2017, had directed the West Bengal Central School Service Commission (hereinafter referred to as the '**Commission**' in short) to verify the eligibility of voluntary teachers for a higher scale of pay based on standard criteria, contrary to NCTE norms. In a span of nearly three days from February 09 to February 11, 2017, the eligibility criteria of 474 voluntary teachers were verified, a task humanely impossible, obviously casts doubt on the entire verification process. The procedure adopted to regularize the service of voluntary teachers clearly offends the mandate of **UMA DEVI (supra)**.
- x.** The Joint Secretary, thereafter on March 08, 2017 had informed the Commission that the offer letters may be issued to 292 teachers pursuant to the Cabinet approval but there is nothing on record to show that Cabinet had examined compliance with the

statutory teacher qualification norms or had taken note of the embargo imposed under the earlier orders. However, the Principle Secretary to the School Education Department, on March 08, 2019, conveyed the approval for regularization of 59 upper primary and 313 secondary and higher secondary volunteer teachers and recognition of 14 schools, completely ignoring the subsisting prohibitions. On the same date, Binoy Tamang the then Chairman of GTA Board of Administration, had issued a letter directing the District Inspector of Schools(S.E.), Darjeeling to implement the said approval, thereafter, on April 26, 2019, the Assistant Secretary had directed preparation of cost estimates for such regularization.

- xi.** The resolution dated June 28, 2018 of the GTA Board of Administration purportedly approving regularization of voluntary teachers is *ultra vires* as the Hon'ble Supreme Court in the case of **DR. ARUNDHATI AJIT PARGAONKAR vs. STATE OF MAHARASHTRA AND OTHERS** reported in **1994 Supp (3) Supreme Court Cases 380** has held that mere continuous service cannot outweigh the requirement of rules of selection through the Commission. The Hon'ble Supreme Court in the case of **STATE OF MANIPUR AND OTHERS vs. Y. TOKEN SINGH AND OTHERS** reported in **(2007) 5 Supreme Court Cases 65** has held that the

appointments made in violation of the constitutional and legal scheme are *non est*.

- xii.** The State, on its own, had constituted a committee comprising of *(i) Commissioner of School Education, (ii) Joint Secretary (SE Branch), School Education Department, (iii) Dy. Director, Grant in Aid Section, Education Directorate, (iv) Representative of the District Magistrate not below the rank of Additional District Magistrate*, to investigate as to the legality of the approval of the appointment of the voluntary teachers. The said Committee, in its report dated October 09, 2023(which forms part of the record) has opined that such approval was illegal and had advised lodging criminal case against the then District Inspector of Schools(S.E.), Darjeeling, accordingly, Bidhannagar (North) Police Station Case No. 75 of 2024 under Section 186/506 IPC read with Section 7(a)/7A of the Prevention of Corruption Act, 1988 was registered. Therefore the illegality in the regularization and/or approval of the service of the said voluntary teachers is apparent, consequently it is liable to be set aside and/or quashed.

4. Mr. Sirsanya Bandopadhyay, learned Standing counsel:-

- i. The petitioners have no *locus standi* to maintain the writ petitions, there are no exceptional circumstances for which the writ petitions are to be entertained. The petitioners are busybodies having no cause of action or relation to the challenge in the writ petitions.

Reliance is placed on the decisions of the Hon'ble Supreme Court in the case of **JASBHAI MOTIBHAI DESAI vs. ROSHAN KUMAR, HAJI BASHIR AHMED AND OTHERS** reported in (1976) 1 Supreme Court Cases 671 and in the case of **SHIBA SHANKAR MOHAPATRA AND OTHERS vs. STATE OF ORISSA AND OTHERS** reported in (2010) 12 Supreme Court Cases 471 to contend that it is settled law that fence sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion.

- ii. There is no question of infringement of the legal right of the petitioners as they do not have any such right, consequently they cannot be *persons aggrieved* so as to maintain the writ petitions. The grievance of the petitioners are speculative based on presumption that their chances of selection may be reduced in future, whereas no person has vested right of recruitment, speculation does not constitute legally enforceable right. In support of his such contention, he places reliance on the decision of the Hon'ble Supreme Court in the case of **AYAAUBKHAN NOORKHAN PATHAN vs. STATE OF MAHARASHTRA AND OTHERS** reported in (2013) 4 Supreme Court Cases 465.
- iii. The right of employment itself may not be a fundamental right but in terms of Articles 14 and 16 of the Constitution, each person similarly situated has a fundamental right to be considered, in

support of such submission reliance is placed on the decision of the Hon'ble Supreme Court in the case of **ANUJ GARG AND OTHERS vs. HOTEL ASSOCIATION OF INDIA AND OTHERS** reported in **(2008) 3 Supreme Court Cases 1**. The Hon'ble Supreme Court in the case of **UMA DEVI (supra)** had rejected the contention that Article 21 of the Constitution includes the right to employment.

- iv. The State is expressly denying allegations of illegal appointments, opaque or arbitrary selection, nepotism or favoritism, corruption or abuse of authority, wrongful backdoor entry in regularizing the engagement of the voluntary teachers. The letter dated March 08, 2019 was an *in-principle* approval awaiting final approval. The said letter clearly demonstrates that the Chairman, Board of Administration GTA was directed to approve the matter in consultation with the Commissioner of School Education who would co-ordinate with the Director of School Education. The State came to know of the appointments from the affidavit filed by the GTA in a connected matter, which was withdrawn subsequently.
- v. No illegal list was prepared, no clandestine process was adopted, no large scale regularization had occurred and no appointments were made without procedural examination. The State in its affidavit has relied on various orders of the Hon'ble High Court by which directions were passed to approve the appointments of

voluntary teachers from time to time and some similar orders have been passed during the pendency of the instant writ petitions, therefore, the State action in granting in-principle approval is in the similar line as directed by this Hon'ble Court in various writ petitions cutting across more than the last decade. It is highly impossible today to set at naught the effect of such orders in collateral proceedings.

5. Dr. Sutanu Kumar Patra, learned senior counsel for the West Bengal Central School Service Commission: -

The Commission adopts the argument of the State.

6. Mr. Joydip Kar, learned senior counsel for the GTA:-

- i. There was complete breakdown of law-and-order situation in the Hill areas of the State of West Bengal due to the outbreak of Gorkha Land movement, the Government had basically lost its power of administration over the said area, majority of the schools were closed due to the said movement and a few schools managed to run the academic activities by shifting to the plains.
- ii. The operation of West Bengal Regional School Service Commission (Hill Region) was suspended by the notice of the School Education Department, Government of West Bengal bearing memo No. 1141-SE(S)/1S-19/2003 dated September 05, 2003. The Central Government, the State Government and the Gorkha Janamukti Morcha on July 18, 2011 had entered into a tripartite agreement

by virtue of which the State Government agreed to form a Separate School Service Commission in Hill areas and simultaneously, the Gorkhaland Territorial Administration Act, 2011(hereinafter referred to as '**said Act of 2011**' in short)came into force and by virtue of Section 26 thereof, the administrative, financial and executive powers in relation to school education in the GTA area was transferred to GTA.

- iii. The operation of the said Regional School Service Commission (Hill Region) though was suspended but no separate school service commission was set up despite several reminders on the part of the GTA. The Government vide memo bearing No. 742-SE(S)/1S-17/10 dated April 26, 2013 had formed an expert committee but it is not known whether such expert committee had submitted any report.
- iv. In the backdrop of such political unrest, there was no recruitment to the post of teachers in GTA area since 1997.Ninety one schools under GTA, in the meantime got upgraded either to Junior High School or to High School or to Higher Secondary School, the Student strength was increasing but no new post of Assistant Teacher was being sanctioned, as a result Pupil-Teacher Ratio ('**PTR**' in short) had deteriorated to an unmanageable level.
- v. The GTA was under Constitutional and legal compulsion to continue with the education in the pre-primary, secondary and

higher secondary level of schools as mandated under the said Act of 2011. In the prevailing situation, the schools of the GTA area became completely dependent upon voluntary/temporary teachers who were the local educated youth coming forward during the emergency offering their selfless service. In such backdrop, considering the continuous services rendered by the voluntary teachers vis-à-vis the acute shortage of teachers in the schools, the State Government had regularized the services of 439 voluntary teachers. However in this exercise, several other similarly placed voluntary teachers were left out.

- vi. Mr. Binoy Tamang, being the then Chairman of the Board of Administrators, GTA, vide Memo bearing No. 163/I-1/CH/BOA/GTA dated April 19, 2018 wrote to the State Government to regularize the left out 271 voluntary teachers, subsequent to the said proposal, the corresponding District Inspectors of Schools of Kalimpong and Darjeeling were entrusted by the State Government to do a verification based upon certain parameters and after such verification, a final list of 313 voluntary teachers who were not included in the list of 439 teachers was forwarded by the said District Inspectors of Schools on July 02, 2018.
- vii. The State Government by the impugned letter bearing Memo No. 254-SE/S/4A-18/15(PT-III) dated March 08, 2019 had

communicated to GTA that it has taken a decision to regularize 313 voluntary teachers. The said letter was also forwarded to the District Inspectors of Schools, Darjeeling and Kalimpong for further early necessary action, whose offices respectively, from administrative point of view, since were already transferred to GTA, the said respective District Inspectors of Schools were directed to complete the necessary formalities based on the approval of the State.

- viii. The prohibitory orders dated July 30, 2010 and June 25, 2018 of the DGHC and the GTA respectively on appointment of voluntary teachers by the schools/managing committees without the written consent of the School Education Department of the DGHC and the GTA were superseded in the meeting of the Board of Administrators, GTA held on June 28, 2018 and proposal of regularization of the voluntary teachers in the schools under the GTA area was approved as a special case. The District Inspectors of Schools had issued the approval of appointments in the month of June, 2019. All the teachers whose appointments were so regularized were granted the benefit of ROPA,2019 with the concurrence of the Directorate of Accounts, Secondary Education, Darjeeling by describing the status of the teachers as 'substantive'.
- ix. The allegation of the State Government that the approval dated March 08, 2019 was an in-principle approval, the final approval

requires financial costs analysis which was only contemplated on April 26, 2019 is not sustainable inasmuch as in the said order dated March 08, 2019, there was no whisper that the said approval was *merely* an in-principle approval pending final approval. The said order of approval was also forwarded to the District Inspectors of Schools, nothing could have prevented the State Government to instruct GTA to wait for final approval. As a natural consequence of such approval, the financial benefits under ROPA, 2019 were also extended to the regularized teachers, therefore it can be safely assumed that the State, only after detailed financial analysis, has granted the financial benefits to the 313 voluntary teachers.

- x. The State Government, by the aforesaid order of approval, has exercised its powers to regularize 313 teachers and the GTA being the delegatee, has implemented the order of the State Government through the District Inspectors of Schools. The State since had already delegated the executive power with respect to such transferred subject i.e., school education to GTA and there was no instruction upon the GTA to wait for final approval, the implementation of such order by GTA shall be deemed to be an act of the State Government itself. In such a situation, there is no scope for the revision of the order by the State Government. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of **ISHWAR SINGH vs. STATE OF RAJASTHAN AND**

- OTHERS** reported in **(2005) 2 Supreme Court Cases 334** to contend that if an authority delegates the power to act, it shall be deemed to be an act of the delegator. In such a situation, there is no scope for revision of the order of the delegatee by the delegator.
- xi. The unfortunate *volte-face* by the State Government is contrary to the document on record. The State in its affidavit-in-opposition, for the first time, has tried to raise the point of in-principle approval, which defies the settled principle of law that there cannot be any evidence, oral or otherwise contrary to the documentary evidence, in support of such contention, reliance is placed on the decisions of the Hon'ble Supreme Court in the case of **R. JANAKIRAMAN vs. THE STATE REPRESENTED BY INSPECTOR OF POLICE, CBI, SPE, MADRAS** reported in **(2006) 1 Supreme Court Cases 697** and in the case of **KRISHI UTPADAN MANDI SAMITI, DISTRICT BADAUN THROUGH ITS SECRETARY vs. BIPIN KUMAR AND ANOTHER** reported in **(2004) 2 Supreme Court Cases 283**. Moreover, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **STATE OF ASSAM AND ANOTHER vs. RAGHAVA RAJGOPALACHARI** reported in **1967 SCC OnLine SC 1** to contend that the State Government, as a respondent to the present writ petition cannot be allowed to attack its own order.
- xii. The writ petitions are liable to be dismissed on the ground of delay since the regularization of the voluntary teachers made in the year

2019 has been challenged much belatedly in the year 2023, besides, it is not even the case of the writ petitioners that they have, at any point of time, come forward to discharge their duties towards the society and ever offered their services to keep the teaching and learning process of the schools in the GTA area ongoing. It is therefore, by way of their own conduct that the writ petitioners have rendered themselves ineligible for any relief.

- xiii. The writ petitioners have alleged violation of Articles 14 and 16 of the Constitution. The situation prevailing at the relevant point of time must not be confused with a normal situation when the principle of equality could be strictly adhered to. The voluntary teachers were continuing for long, when there were more than 3000 vacancies in different schools in GTA area, it is these voluntary teachers who have successfully handholded many students for many years and with the efflux of time, most of them have completed B.Ed., a few are still pursuing. The GTA is not at all interested in continuing with this practice and continuously pursuing the Government for a functional School Service Commission. The Government, considering the peculiar situation and the invaluable and continuous contribution of the voluntary teachers has taken a policy decision to regularize the service of the said teachers, such regularization was only a one-time

arrangement, which should not to be interfered with by this Court also being a Court of equity.

- xiv. Judicial review naturally searches for precision and strict adherence to the Rules to prescribe and assure administratively fair and correct practices, yet it cannot entirely abandon flexibility. As discussed by D. Galligan in *Discretionary Power* (1986) and quoted with approval in De Smith's *Judicial Review* (7th Edition), there are limitations inherent in the Court's constitutional role. The principle of separation of powers confers matters of social and economic policy upon the legislature and executive, rather than the judiciary, as such the Court should avoid interfering with the exercise of discretion by the executive when its aim is pursuit of policy. The regularization of the engagements of 313 teachers is a policy decision of the Government, which unless is arbitrary, capricious and without reason is not open to judicial view. In support of such contention, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **RACHNA AND OTHERS vs. UNION OF INDIA AND ANOTHER** reported in (2021) 5 Supreme Court Cases 638.

- xv. The Government, to maintain security and integrity was under a compulsion to win the trust of the local people. The decision of appointing voluntary teachers and their subsequent regularization, in the backdrop of Tripartite Agreement, is not just an

administrative decision, rather it is more in the nature of socio-political solution. The propriety of such decision is not to be mechanically adjudicated only in the parameters of procedures. There will be travesty of justice if the merits and demerits of this decision are weighed in exclusion to the prevailing facts and circumstances. Justice would be sub-served if the decision of regularization of the appointment of the voluntary teachers is not interfered with.

- xvi. On the principle of parity, reliance is placed on the decisions of the Hon'ble Supreme Court in the case of **CHANDER MOHAN NEGI AND OTHERS vs. STATE OF HIMACHAL PRADESH AND OTHERS** reported in (2020) 5 Supreme Court Cases 732 and in the case of **MALATHI DAS (RETIRED) NOW P.B. MAHISHY AND OTHERS vs. SURESH AND OTHERS** reported in (2014) 13 Supreme Court Cases 249. The decision of the Hon'ble Supreme Court in the case of **RAM SWARUP vs. STATE OF HARYANA AND OTHERS** reported in (1979) 1 Supreme Court Cases 168 is relied on to buttress the submission that the lack of professional training qualification at the time of initial engagement as voluntary teachers makes the engagement irregular and if the required qualification is acquired in service, Court has considered the case in favour of the candidate.

- xvii. There is no *mala fide* on the part of the authorities in regularizing the appointment of the 313 voluntary teachers, on this point reliance is placed on the decisions of the Hon'ble Supreme Court in the case of **DR. M.S. MUDHOL AND ANOTHER VS. S.D. HALEGKAR AND OTHERS** reported in (1993) 3 Supreme Court Cases 591, in the case of **SRINIVASA BHAT (DEAD) BY LRS. AND OTHERS. vs. A. SARVOTHAMA KINI (DEAD) BY LRS. AND OTHERS.** reported in (2010) 12 Supreme Court Cases 523 and on the decision of the Hon'ble Division Bench of this Court in the case of **ANIL KUMAR XALXO vs. LIEUTENANT GOVERNOR, ANDAMAN AND NICOBAR ISLANDS** reported in 2019 SCC OnLine Cal 9304. The decision of the Hon'ble Supreme Court in the case of **MOHINDER SINGH GILL AND ANOTHER vs. THE CHIEF ELECTION COMMISSIONER, NEW DELHI AND OTHERS** reported in (1978) 1 Supreme Court Cases 405 is relied on to contend that the action should be adjudged by the reasons stated while making the order and supplementary reasons in the shape of affidavit are to be excluded.
- xviii. The decisions relied on by the writ petitioners are no pointer to the issue under consideration inasmuch as they are factually distinguishable. **SULEKH CHANDRA PRADHAN (supra)** cannot be relied on as in the said case, Hindi teachers were appointed by the management of schools *de hors* the statutory rules whereas in the

present case, the State has regularized the services of the voluntary teachers after due verification of their qualifications and upon satisfying the eligibility criteria. In the case of **M. TRIPURA SUNDARI DEVI (supra)**, appointment to a post was made while ignoring the minimum qualification prescribed in the advertisement for appointment, which is not the case here. The decisions in the cases of **UMA DEVI (supra)** and **ANAND KUMAR YADAV(supra)** cannot be relied on inasmuch as in the said cases, appointments to the posts, though without eligibility, have been made in the normal circumstances whereas in the present case, no normal recruitment drive was possible in the prevalent situation. The case of **KISHAN GOPAL VYAS(supra)** cannot be relied on inasmuch as in the said case, the issue was regarding appointment to the post of store keeper/store issuer/ store clerk, which is not the issue here. The decisions of **DR. ARUNDHATI AJIT PARGAONKAR (supra)** and **Y. TOKEN SINGH(supra)** are factually distinguishable.

7. Mr. Soumya Majumdar, learned senior counsel for the respondent nos. 13 to 132:-

- i. The entry of the added respondents in the Schools of GTA area took place at a time when education in the hill region was suffering due to dearth of teachers and the Managing Committee of the Schools had appointed the graduate local people on voluntary

basis with a minimum honorarium for students welfare, importantly the operation of the School Service Commission (Hill Region) remained suspended since 2003, it continues to remain so.

- ii. The added respondents have requisite qualifications for appointment as Assistant Teacher in Secondary School as on the date, in consequence thereof the State Government has provided the benefit of ROPA 2019 to them. The consequence of non-attainment of qualification has also been spelt out in the Rules of ROPA 2019, by stoppage of increment etc. without loss of service. The said relaxation was also incorporated in the statutory amendment of the Management Rules of 1969 by exercising statutory powers conferred under notification dated March 08, 2018. The rules clearly allow the untrained in-service teachers to continue in service, the rules not having been challenged, all consequences following therefrom also bind everybody including the writ petitioners.
- iii. The affidavit of West Bengal Central School Service Commission clearly reveals the process of verification which is in accordance with law. The engagement of the private respondents were regularized in the year 2019 but the challenge is thrown to such regularization only in the year 2023, the delay in such challenge since has not been explained, the writ petitions are liable to be dismissed on the said ground alone.

- iv. The petitioners have not demonstrated infringement of their any fundamental right or any legally protected right, reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***MUNICIPAL CORPORATION OF GREATER MUMBAI AND OTHERS vs. RAFIQUNNISA M. KHALIFA (DECEASED) THROUGH HIS LEGAL HEIR MOHD. MUQUEEN QURESHI AND ANOTHER*** reported in **(2019) 5 Supreme Court Cases 119** to contend that mandamus can only be issued under Article 226 of the Constitution when there is a right and correspondingly a legal duty to perform.
- v. Articles 14 and 16 of the Constitution have no manner of application in the present case since subject appointment was not by the State in any office employment under the State. The Schools are private bodies discharging public duties and are not financially, functionally and administratively dominated by the State. In support of his such contention, he places reliance on the decisions of the Hon'ble Supreme Court in the case of ***PRADEEP KUMAR BISWAS vs. INDIAN INSTITUTE OF CHEMICAL BIOLOGY AND OTHERS*** reported in **(2002) 5 Supreme Court Cases 111** and in the case of ***BOARD OF CONTROL FOR CRICKET IN INDIA vs. CRICKET ASSOCIATION OF BIHAR AND OTHERS*** reported in **(2015) 3 Supreme Court cases 251.**

- vi. Section 2(n) of the said Act of 1997 stipulates that 'school' means a recognized non-Government aided Secondary/Higher Secondary/Sponsored Schools, Explanation II thereof explains that 'Aided' with its grammatical variations used with reference to a school, shall mean aided by the State Government in the shape of financial assistance towards the basic pay of the teachers of that school. Explanation III of the said definition explains that 'Basic pay' shall mean the monthly pay. In view of Section 26(v) of the said Act of 2011 the financial, executive and administrative powers in relation to the GTA Schools have been transferred to the GTA, apart from receiving fund, there is no dominance of the State over the Schools, that being the position, the said Act of 1997 shall have no manner of application in the instant case.
- vii. A question may arise as to whether there was/is any existing law or general/special order of Government in the absence of the said Act of 1997, the West Bengal Board of Secondary Education Act, 1963 (hereinafter referred to as '**the said Act of 1963**' in short) and the Management Rules of 1969 will apply to the schools of GTA. The answer is in negative, firstly with the enactment of the said Act of 1997, the said Act of 1963 cannot operate in the field of recruitment and appointment to control the modality of selection. The said Act of 1963 can be said to have been subsumed or eclipsed by the said Act of 1997 since two statutes cannot operate

or exist simultaneously. There was no law under the said Act of 1963 to regulate the selection process or recruitment of teachers. Even if there had been any guidelines/executive order then the same did not constitute law. In support of such contention, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **STATE OF U.P. AND ANOTHER vs. JOHRI MAL** reported in **(2004) 4 Supreme Court Cases 714**.

- viii. The said Act of 1997 does not have any manner of application in the instant case, consequently the method of recruitment under the said Act of 1963 could, at the most, be made applicable in the facts and circumstances of the case, such provision empowered the managing committee of the schools to make appointment then get the same approved by Director/District Inspector of Schools. In the facts and circumstances of the instant case, the District Inspector of Schools had approved the appointments as there was no illegality in the process and the State was entitled to regularize the irregularity.
- ix. The State Government has given in-principle approval. The question of man to man approval does not arise at all, in fact considering the peculiarity of the situation the State Government had only invoked the fundamental duties vis-à-vis protection of the rights of the children to education. Therefore, the writ petitions are liable to be dismissed.

8. Mr. Biswaroop Bhattacharya, learned counsel for the added respondent nos. 9 to 12 & 133 to 294:-

- i. The writ petitions are misconceived, misleading and an abuse of process of law. The petitioners lack *locus standi* to maintain the writ petitions as they were not eligible to be appointed as teachers in the relevant period when the respondents were engaged as voluntary teachers. It is therefore inconceivable as to how they can claim to be aggrieved by a process of appointment in which they were not even eligible for consideration. The present writ petitions are not public interest litigations, the petitioners having no direct or substantial grievance, cannot be considered as aggrieved persons and their attempt to invoke the extraordinary writ jurisdiction of this Hon'ble Court is wholly untenable. If at all the petitioners had any grievance, the proper forum and mode of redressal have not been pursued by them and therefore the writ petitions are not maintainable at their behest.
- ii. The writ petitions are vitiated by gross delay and laches. The regularization of the respondent voluntary teachers took place as far back as 2019 yet the petitioners have chosen to challenge the same belatedly in 2023. There was no correspondence of the petitioners with the School Education Department, Government of West Bengal in the year 2022 which signifies that the petitioners slept over their alleged rights for years without furnishing any

cogent explanation as to when or how they are aggrieved, as such they are not entitled to maintain the challenge. The writ petitions are not borne of any genuine grievance but are tainted by the political considerations and motive to unsettle the academic environment in the GTA area. At a time of acute turmoil, when schools in the GTA area had to be temporarily shifted to the plains and access to the hill areas was virtually impossible, the petitioners remained in the comfort of their homes. By contrast, the voluntary teachers at great personal risk, had continued to discharge their duties often conducting the classes in their homes so that the education of the students does not come to standstill. Having refrained from contributing when the system was in crisis, the writ petitioners now, after normalcy has returned, have sought to assail the regularization of those very teachers who ensured continuity of education in the region. In such circumstances, the writ petitioners by their own conduct and unexplained delay have disentitled themselves from seeking any discretionary relief under high prerogative writ jurisdiction of this Hon'ble Court.

- iii. It is emphatically denied that the added respondents had obtained appointment or regularization through any backdoor or by resorting to any illegality. The relevant details of the engagement of the voluntary teachers including dates of their appointments, schools of posting and academic qualifications are already on

record as disclosed by GTA in its affidavits. The Regional School Service Commission in the GTA area was non-functional since 2003, as such to meet the growing need of the students and to ensure continuity of education, the authorities have engaged voluntary teachers. In recognition of the long selfless service of the voluntary teachers, the competent authorities, upon verification of qualifications, have subsequently regularized their services. The act of regularization was not a fresh recruitment but an acknowledgement of services already rendered. The contention of the writ petitioners that such regularization was contrary to the executive memoranda is misplaced as the GTA itself subsequently had superseded such executive instruction while recommending regularization.

- iv. The petitioners have referred to isolated cases of individuals such as *Anjula Chhetri* in an attempt to taint the entire process. These instances are wholly irrelevant for neither of the said individuals were included in the list of 313 teachers whose services have been regularized, likewise the aspersions cast upon other names are not supported by any documentary proof and are based entirely on surmises and conjecture.
- v. The record demonstrates that after regularization of an earlier batch of 439 teachers, the GTA authorities had forwarded further names of voluntary teachers who had been left out. Upon proper

verification by the competent authorities, approval was granted for regularization of 313 teachers, this was a considered administrative decision and cannot be re-opened at the behest of third parties lacking locus standi.

- vi. It is denied that the majority of voluntary teachers lacked the mandatory qualification and on the contrary, verification revealed that they were duly qualified and many have since acquired additional training qualifications such as B.Ed. qualification in conformity with the policy requirement. It is settled principle of law that extraordinary and discretionary jurisdiction of the Hon'ble Court under Article 226 of the Constitution is not be exercised to unsettle accomplished fact nor to reward indolence nor to lend its authority to politically motivated litigation. The present writ petitions being devoid of merit and brought with collateral intent, deserves to be dismissed *in limine*. Lastly, adopting the argument of Mr. Soumya Majumdar, learned senior counsel for the respondent nos. 13 to 132, the decision of the learned Single Judge of this Court in the case of **BALKRISHNA LIMBU vs. GORKHALAND TERRITORIAL ADMINISTRATION COUNCIL AND OTHERS** reported in **2025 SCC OnLine Cal 1080** is cited to contend that the provisions of the said Act of 1997 is not applicable in respect of the schools at GTA area.

The Court:-

Heard learned counsel for the parties at length, perused the materials on record and the written notes on argument filed on behalf of the parties are considered.

9. To decide the challenge to the regularization of the engagement of the said 313 voluntary teachers, it is necessary to take a close look to the facts and circumstances leading to such regularization, which are detailed in the following sub-paragraphs:-

- i. The said 313 voluntary/guest teachers were engaged between the period from 1999 to 2016.
- ii. The Secretary, Department of Education of the erstwhile Darjeeling Gorkha Hill Council (**'DGHC'** in short), by the Order No. 01/1-2/EDN/DGHC/2010-11 dated July 30, 2010 had directed all the Heads of the school (Primary and Secondary) under it not to appoint any teachers w.e.f. July 01, 2010 without the written consent of the Education Department of DGHC.
- iii. The Darjeeling Gorkha Hill Council Act, 1988 was repealed by virtue of Section 74 of the said Act of 2011 and an autonomous self-governing body was created. A joint meeting relating to education at GTA area was held on November 25, 2014, at Nabanna in the presence of the Additional Chief Secretary (Home & Hill Affairs Department), The Secretary (Higher Education Department), Executive Sabha Members and other representatives

of State and GTA. There was a specific agenda in the said meeting regarding the regularization of volunteer/Ad-hoc Teachers in Secondary Schools under GTA. The following resolution was adopted on the said agenda:-

“6. Regarding the regularization of Volunteer/Ad-hoc Teachers in Secondary Schools, GTA, Sri Roshan Giri, Executive Sabha Member suggested to constitute a Recruitment Board as one-time solution to resolve the vexed problem. Sri H.B. Chhetri, MLA, Kalimpong also informed that there are 503 Volunteer and 135 Ad-hoc teachers in aided Secondary Schools. Additional Chief Secretary and Principal Secretary, Home & Hill Affairs, however expressed his apprehension that it may create a precedent which would have unacceptable consequences. Instead he suggested a consolidated enhanced equivalent salary and for this a regularization mechanism is to be devised, it, however, requires the approval from the Finance Department of State Government.”

- iv. In the aforesaid meeting it was also proposed that a further meeting will be held to resolve the outstanding issues relating to school education in GTA area. But there is nothing on record to suggest that such further meeting was ever held. However, three years thereafter the Secretary, School Education Department, Government of West Bengal by an order bearing no. **112/1(5)/SE/S/4A-18/15(Pt.1)/1(4)/17** dated February 06, 2017, had constituted a committee consists of Principal Secretary, GTA, Secretary West Bengal Central School Service Commission, District Inspector of Schools (SE) Darjeeling and OSD to Minister-in-Charge to examine the representations received from temporary teachers of the schools under GTA for

the purpose of verification of the genuineness of their claim for higher scale of pay. The said order had fixed the eligibility criteria to get such higher scale of pay which were three years teaching experience, knowledge of Nepali and knowledge of relevant subjects. The said Committee was directed to give its finding on the said eligibility.

- v. The Joint Secretary, School Education Department, Government of West Bengal simultaneously by a letter bearing no. **113/1(3)/SE/S/4A-18/15(Pt-1)** dated February 06, 2017, had directed the Chairman of the Commission to examine the said eligibility of the applicants who had applied for such higher scale of pay.
- vi. The Chairman of the Commission, under his letter bearing no. 179/6872/CSSC/ESTT/2017 dated February 13, 2017 had informed the Secretary School Education Department (Secondary Education), Government of West Bengal that the verification of the eligibility of the said teachers as per the direction dated February 06, 2017 was conducted and it was further informed that detailed list of eligible and non-eligible candidates with reasons would be submitted later.
- vii. Sri. Binoy Tamang, the then Chairman of the Board of Administrators, GTA by a letter bearing no. 163/I-1/CH/BOA/GTA dated April 19, 2018 addressed to the then Minister in charge,

Department of School Education, Government of West Bengal had sent the purported final list of 271 voluntary teachers in various secondary schools under GTA allegedly left out earlier with a request to regularize such teachers in their service.

- viii. The Assistant Secretary, School Education Department, (Secondary Branch), Government of West Bengal by a memo bearing no. 408-SE/S/4A-18/15(Pt.-I) dated April 24, 2018, had informed the District Inspectors of Schools (Secondary Education), Kalimpong and Darjeeling that the Department has received a proposal of regularization of 271 voluntary teachers. In the said memo, the eligibility criteria of the voluntary teachers for such regularization were fixed, which were three years' teaching experience, requisite qualification, knowledge in Nepali and relevant subject, letter of engagement issued by the concerned school and existence of sanctioned vacancy. The said District Inspectors of Schools were directed to verify the said eligibility of such voluntary teachers.
- ix. The Executive Director, Education Department GTA, by memo bearing no. 302(899)/GTA-EDCN/2017-18 dated June 25, 2018 had directed the Headmistress/Headmaster of all Secondary Level Schools under GTA and the Head Teacher of all Upper Primary and Primary Level of Schools under GTA that the authority in GTA will not entertain or allow engagement of any voluntary teachers in

schools under GTA. In the said memo it was recorded that during scrutiny it came to notice of the authority that in many cases, the candidates who do not possess requisite qualification have been engaged whimsically, in violation of the order dated July 30, 2010 of the DGHC. In the said memo, it was clarified that such engagement of voluntary teachers in contradiction of the mandates of the Government of West Bengal and other appropriate authorities, henceforth would be considered as personal liability of the Head of the Institution and its Managing Committee.

- x. The Board of Administration, GTA in its executive meeting held on June 28, 2018, had approved the proposal for regularization of the voluntary teachers in Secondary Schools under GTA as a special case with a clarification that the order no. 01/1-2 EDN/DGHC/2010-11 dated 30th July, 2010 and Order no. 302(899)/GTA-EDCN/2017-18 dated 25/06/2018 shall not affect the said decision of the Board.
- xi. The District Inspector of Schools (SE), GTA Darjeeling by a memo bearing no. 910/SE dated 02/07/2018 had informed the Assistant Secretary, School Education Department (Secondary Education), Government of West Bengal that all the criteria laid down in his letter no. 408-SE/S/4A-18/15 PL-1 dated 24.04.2018 in respect of 271 voluntary teachers of Government aided and Government sponsored schools of GTA have been physically verified.

xii. The Principal Secretary School Education Department by the impugned communication dated March 08, 2019 had informed Sri. Binoy Tamang, the then Chairman, Board of Administrators GTA that the State Government has approved the regularization of the said 313 voluntary teachers in Secondary/Higher Secondary Schools as communicated by DI (SE) Darjeeling to the Directorate/Department vide letter No. 910 dated 01.07.2018.

10. The purported regularization of the said 313 voluntary teachers in reality was their fresh appointment at the Government aided and sponsored schools under the GTA. The process of selection detailed in different subparagraphs under the above paragraph no. 8 is unknown to any selection process for appointment of teachers in such Schools. The said Act of 1997, which came into force with effect from April 01, 1997, is an Act to provide for the constitution of a Regional School Service Commission in West Bengal to regulate the manner of selection of persons for appointment in the post of teachers.

11. Admittedly the mandate of the said Act of 1997 was given total go by in appointing the said 313 voluntary teachers in the name of regularization of their initial engagement. The rigor of said Act of 1997 has been sought to be avoided by the respondents on a plea that the voluntary teachers were appointed in a situation when the total State machinery had collapsed due to political unrest but to keep the education system on, the said teachers were appointed and later on their initial engagements were regularized. The

plea is too feeble inasmuch as the hill region of the Commission, prior to its suspension in the year 2003, had conducted a selection process in the year 2002 for appointment of assistant teachers in different categories against sanctioned post at recognized aided non-government aided secondary schools under the then DGHC. That apart, the petitioners in their affidavit-in-reply to the affidavit-in-opposition of the respondent nos. 13 to 132 filed in WPA 1089 of 2023 had brought documents on record to show that in the year 2015 selection process was conducted in the hill area to fill up different vacant posts at the District Judgeship and other Government organization. The initiation of such selection process certainly indicates that the situation in the hill area was not so bad for which the regular selection process could not be conducted for appointment of teachers in the schools under GTA.

12. An argument has been advanced on behalf of the private respondents that in view of vesting of administrative, financial and executive powers in the region in relation to school education including Primary Education, Secondary Education and Higher Secondary Education (including vocational training, physical education, Government Schools) upon GTA by virtue of Section 26 of the said Act of 2011 and transfer of the schools in GTA area which were under the management of State to GTA in terms of Section 60 thereof, the said Act of 1997 is not applicable in respect of the said schools. Besides, the said schools are not coming within the purview of the definition of 'school' as defined under Section 2(n) of the said Act of 1997 inasmuch as the State is not paying the basic pay of the teachers rather the State is

providing non-planned budgetary support to the finance department of GTA, which in turn sanctions the fund to the Education Department of GTA and the said department is paying the salaries to the teachers of the schools under GTA.

13. The said argument is completely misconceived inasmuch as the GTA by its character is an autonomous self-Governing body formed to administer the region so that socio economic, infrastructural, educational, cultural and linguistic development is expedited and ethnic identity of Gorkhas is established thereby achieving all round development of the people of the region. Nonetheless the State by the various provisions of the said Act of 2011 retains pervasive control over the GTA. Though it is unnecessary to identify all of those areas of control of the State but as an example Section 25 of the said Act of 2011 can be referred to by virtue of which the GTA is empowered to frame a regulation to prescribe a manner to conduct its business but such regulation can only be framed subject to the approval of the State.

14. Mere distribution of salary to the teachers by the Education Department of GTA does not signify that the schools are not coming within the purview of definition of 'school' as defined under Section 2(n) of the said Act of 1997 and those are private schools inasmuch as the GTA being an autonomous body receives the fund from the State and in turn, distributes it in shape of salary to the teachers of the schools under GTA.

15. Section 73 of the said Act of 2011 is a clear answer to the issue regarding the applicability of said Act of 1997 in the area under GTA. The said provision lays down that no provision of the said Act of 2011 can affect the application of any law i.e. any enactment, ordinance, regulation, order, by-law, rule, scheme, notification or other instrument having the force of law made before or after the promulgation of the said Act of 2011, unless such law specifically provided for exclusion of the region from such application. The said Section 73 of the said Act of 2011 is quoted below for ready reference:-

‘73. Nothing in this Act shall effect the application of any law; whether made before or after this Act, to the region, unless such law specifically provided for exclusion of the region from such application.’

Explanation.- ...

For the purpose of this section “law” shall include any enactment, ordinance, regulation, order, by-law, rule, scheme, notification or other instrument having the force of law.”

16. That apart, the Hon’ble Division Bench of this Court in the case of **KIRAN SUBBHA & ORS. vs. STATE OF WEST BENGAL & ORS** reported in **(2008) 2 CHN 530**, had the occasion to deal with the issue of applicability of the said Act of 1997 in respect of the schools under DGHC. The Hon’ble Division Bench while interpreting Section 15 of the said Act of 1997 and the explanation appended thereto, has held that provisions of the West Bengal School Service Commission Act, 1997, the West Bengal Board of Secondary Education Act, 1963 and all the Rules are obviously applicable, save and except, the explanation provided in the respective Acts thereof. In view of

the said decision of the Hon'ble Division Bench, I am unable to follow the decision of the learned Single Judge of this Court in the case of **BALKRISHNA LIMBU (supra)** cited on behalf of the respondents. In the facts and circumstances of the present case the decisions of the Hon'ble Supreme Court in the case of **PRADEEP KUMAR BISWAS (supra)**, **S.S. RANA (supra)** and **BOARD OF CONTROL FOR CRICKET IN INDIA(supra)** cited on behalf of the respondents are completely misplaced.

17. In view of the discussion made above, all the arguments of Mr. Majumdar on the issue of applicability of the said Act of 1997 and of the notifications dated October 22, 1997 and February 05, 2004, both issued by The School Education Department, Government of West Bengal, to include District- Darjeeling within the northern region of the West Bengal School Service Commission and in the hill region of the commission, are rejected being fallacious.

18. The State, in its affidavit-in-opposition, has disclosed its stand on the issue of regularization of the said 313 voluntary teachers. The State in the said affidavit has specifically stated that though the letter of the then Chairman of the Board of Administrators, GTA dated April 19, 2018 to regularize 271 voluntary teachers was under the consideration of the School Education Department and in continuance thereof, the Commissioner of School Education was directed to work out the estimated financial costs of the proposed regularization of 313 voluntary teachers in secondary/higher secondary schools under GTA and to furnish a copy of such estimate to the

School Education Department along with a formal proposal but no estimate has yet been received in compliance with the said direction. The District Inspector of Schools (SE) Darjeeling was aware that the communication of the School Education Department dated March 08, 2019 was an *in-principle* approval not the final. The School Education Department was thus awaiting for the response regarding the financial implication of the regularization of 313 voluntary teachers so that the said financial implication can be placed before the Finance Department to be followed by the decision of the Cabinet for final approval as it was done in previous instances of regularization of 439 voluntary teachers. It is argued on behalf of the State that the State came to know about the appointments of the 313 voluntary teachers from an affidavit filed by GTA which was subsequently withdrawn.

19. The School Education Department had constituted a committee consists of Commissioner of School Education, Joint Secretary (Secondary Education Branch) School Education Department, Deputy Director Grant-in-Aid Section- Education Directorate and representative of the District Magistrate, Darjeeling to cause an enquiry as to how the appointment/approval of 313 candidates as mentioned by the GTA in its affidavit have allegedly been made without waiting for the final approval of the State Government through Finance Department and Cabinet as it was done in the case of appointment of 439 voluntary teachers in the year 2017.

20. The Commissioner of School Education West Bengal under his letter bearing memo No. CSE/318/2023 dated October 09, 2023 had submitted

the enquiry report of the said Committee before the Principal Secretary, Government of West Bengal, School Education Department. A copy of the said report was filed before this Court. The analysis and conclusion of the said report is quoted below which itself would demonstrate the illegality committed in appointing the said 313 voluntary teachers in the name of regularization. The analysis and the recommendation of the said report are reproduced below for ready reference:-

“Analysis:

Regarding the issue of how the appointment/approval of appointment of 313 candidates as mentioned by the GTA in their affidavit, have been made without waiting for the final approval of the State Government and the officials/other persons prima facie responsible for such conduct/appointments, the following points are revealed.

(a) In terms of Section 9(1) of the West Bengal Central School Service Commission Act, 1997 read with the letter No. 1141-SE(S) dated 05.09.2003 (Annexure-Q) read with the letter No. 1927/SL/5S-552/08 dated 4/7th December, 2009 (Fef.-O) the West Bengal Central School Service Commission (WBCSSC) is the authority to recommend for filling up of vacancies in aided/sponsored schools.

(b) It is pertinent to mention here that by an order No. 1141-SE(S) dated 05.09.2003 the operation of the Hill Region office of the SSC had been kept under suspension. But that did not mean that the West Bengal School Service Commission had lost its jurisdiction in the Hills, presently the GTA area. In the Hill area, the SSC can operate through its Central Commission. This has also been clarified in the School Education Department letter No. 1927/SL/5S-552/08 dated 4/7th December, 2009 to inform the DI of Schools(SE), Darjeeling, GTA that no vacancy can be filled up without the recommendation of the WBSSC. (Ref.O)

(c) Sri Pran Gobinda Sarkar, Ex. District Inspector of Schools(SE), Darjeeling who has approved 313 volunteer teachers has, in his written submission, stated that Mr. Binoy Tamang, the then Chairman, Board of Administrators, GTA, had shown him (DI) the letter of the Principal Secretary, School Education Department bearing No. 254/SE/S dated 18.03.2019 and had directed him to approve 313 volunteer

teachers. But he (DI) knew that he could not grant approval based on the said letter as it was not the final approval letter addressed to the DI. Accordingly, he had informed this to Sri Binoy Tamang. Hence, it is clear that being a senior officer of the Education Service he was well aware of the fact that regularization can be done only after recommendation from the WBCSSC, as has been clarified vide letter No. 1927/SL/5S-552/08 dated 4/7th December, 2009.

(d) He has informed that tremendous mental pressure was created on him. At one stage, for being unable to bear the pressure created and mounted on him, he had told Mr. Binoy Tamang would issue upon him an order. Binoy Tamang immediately had issued an order vide no. 01/I-1/CH/BOA/GTA/ 2019/20, dated 08.03.2019 to issue approval and told him that the order was given in the capacity of the Chairman, GTA.

(e) However, from the chronology of event, as submitted by himself in his deposition, the theory of issuance of approval letter to the 313 volunteer teachers by Sri Sarkar due to “tremendous mental pressure” is not established. Sri Tamang issued the letter no. 01/I-1/CH/BOA/GTA/2019/20, dated 08.03.2019 to issue approval to the volunteer teachers on the same day, the letter no. 254/SE/S dated 08.03.2019 of School Education Department was issued. However, the regularization letters were issued by Sri. Sarkar on 21.6.2019. Had the pressure was/been unbearable, he would have issued the approval orders on the same day i.e. on 08.03.2019 or immediately thereafter. Though about three months time passed before he had granted the approvals, he did not inform about this so-called “tremendous mental pressure” to the Department or the School Education Directorate, which has been admitted by Sri Sarkar before the committee members and other officers/persons present at Siliguri on 22.9.2023.

(f) It is pertinent to mention that, in the meantime Sri Sarkar, as District Inspector of School (SE), Darjeeling & Kalimpong has received letter no. 517 (2)-SC/G dated 22.5.2019 and 516(2)-SC/G dated 22.5.2019 from the Dy. Director of School Education (Junior High) to send details of the school and volunteer teachers/formal proposal along with relevant documents. From this letter also, it is clear that he knew that he could not issue regularization letters without formal approval as per due procedure.

(g) If Sri Pran Gobinda Sarkar was in need of any guidance or advice, he ought to have officially and formally approached his superior officers in official and documented manner, which he refrained from doing.

(h) Sri Pran Gobinda Sarkar did not involve any other officer/ staff of his office in the process of regularization.

Thus it is clear that Sri Pran Gobinda Sarkar, Ex. District Inspector of Schools (SE), Darjeeling has committed the offence of granting approvals to 313 volunteer teachers without completing his obligations and without referring the matter back to the department for further necessary action and instruction. As per his own admission, he granted such approval knowing fully well that the act was not as per approved procedure, without any valid ground of justification.

Recommendation:

From the findings as stated above, it is revealed that Sri Pran Gobinda Sarkar, Ex. District Inspector of Schools (SE), Darjeeling has committed the offence by approving 313 volunteer teachers knowing fully aware that the act was not as per approved procedure without any valid ground of justification. Hence departmental proceedings may be drawn up against him following due procedure as he is a retired person now.”

21. The Deputy Secretary, School Education Department on the basis of the said enquiry report and the recommendation thereto had lodged a complaint with the Bidhannagar (North) Police Station against the said District Inspector of Schools (SE) Darjeeling and others being Bidhannagar (North) P.S. Case No. 75 of 2024 under Section 186/506 IPC read with Section 7(a)/ 7A of the Prevention of Corruption Act, 1988. The said criminal case though has ended in final report but the report of the enquiry committee and the initiation of the said criminal case certainly signify that the regularization of the engagement of the said 313 voluntary teachers was done in violation of the relevant laws.

22. In the aforesaid backdrop, I am unable to accept the argument of Mr. Kar that the Government, after extending all benefits of a regular teacher to the said 313 voluntary teachers now cannot turn back and say that the approval of regularization of the initial engagement of the said 313 voluntary teachers was an *in-principle* approval pending final approval. That being the position, the decisions cited by Mr. Kar in the case of **ISWAR SINGH (supra)**, **R.JANAKI RAMAN (supra)**, **BIPIN KUMAR(supra)** have no manner of application in the present case. The State never took a final decision to regularize the engagement of the said 313 voluntary teachers, therefore, there is no question that the State is attacking its own decision in the present writ petitions or a dispute between Government Departments has been sought to be settled here. That being the position, the decisions of **RAGHAVA RAJGOPALACHARI (supra)** and **THE CHIEF CONSERVATOR OF FORESTS GOVT. OF A.P. (supra)** have no application in the facts and circumstances of the present case. The regularization of the 313 voluntary teachers is not even a final decision of the State, far less a policy decision, therefore, the decisions cited on behalf of the respondents on the scope of judicial review to the policy decision of the State deserve no consideration.

23. The petitioners are educated youth of hill region, filling up of the vacant posts of the Government aided/sponsored schools under GTA without following any known selection process is a fraud practiced upon the petitioners inasmuch as the petitioners though eligible and deserving candidates but could not offer themselves for the said vacant posts, therefore, their rights

guaranteed under Articles 14 and 16 of the Constitution certainly have been affected, consequently objection to the *locus standi* of the petitioners to maintain the challenge/challenges, particularly to throw challenge to the decision to appoint the 313 voluntary teachers in the name of regularization of their initial engagement in the schools under GTA is overruled and in view thereof the decisions of the Hon'ble Supreme Court in the case of **ROSHAN KUMAR(supra)**, **SHIBA SHANKAR MOHAPARTRA(supra)**, **AYAAUBKHAN NOORKHAN PATAHAN (supra)**, **ANUJ GARG(supra)** cited on behalf of the State have no manner of application in the present case.

24. The voluntary teachers admittedly were engaged temporarily without following any selection process, regularization of such engagements offends the constitutional scheme. The following observations of the Hon'ble Supreme Court in the case of **UMA DEVI (supra)** being relevant to the context are quoted below:

'45. ...it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible....'

25. The Hon'ble Supreme Court in the case of **KISHAN GOPAL VYAS (supra)** has held that any order for absorption and regularization of a person not appointed in accordance with the rules resulting denial of equal opportunity in the matter of employment to other candidates for the public offices, such a

course must obviously be eschewed. The paragraph 7 of the said judgment is quoted below for ready reference:-

“7. Appointment to the post of a Storekeeper/Store Issuer/ Clerk is regulated by certain rules governing recruitment to the post in the Department. The respondent, if eligible, is entitled to be considered for the same along with all others who may be candidates for the appointment. That is the only correct way of filling these posts which would ensure equal opportunity in the matter of employment as required by Articles 14 and 16 of the Constitution of India to all eligible persons who are candidates for these posts. A direction like the one given by the tribunal in favour of the respondent or any one like him has the effect of denying equal opportunity to the other eligible candidates by appointing a person not in accordance with the rules. Any order for absorption and regularization of a person not appointed in accordance with rules, given in the manner contained in the impugned order of the tribunal would result in denial of equal opportunity in the matter of employment to the other eligible candidates for the public offices. Such a course must obviously be eschewed. The tribunal’s order is, therefore, set aside.”

26. The appointment of teachers in Government aided and sponsored schools is regulated by the provisions of the said Act of 1997 and rules/regulations framed thereunder. The voluntary teachers have been appointed in the name of regularization without following any rules and regulations. The Hon’ble Supreme Court in the case of **SULEKH CHANDRA PRADHAN (supra)** has held that the appointments made in contravention of statutory provisions are void *ab initio*. The Hon’ble Supreme Court in the case of **DR. ARUNDHATI AJIT PARGAONKAR (supra)** has held that ‘*Eligibility and continuous working for however long period should not be permitted to over-reach the Law. Requirement of rules of selection through Commission cannot be substituted by humane*

considerations'. The Hon'ble Supreme Court in the case of **Y. TOKEN SINGH (supra)** has held that appointments in violation of constitutional and legal scheme are *non est* and not binding on the State.

27. The Hon'ble Supreme Court in the case of **DHARNIDHAR MISHRA (D) AND ANOTHER vs. STATE OF BIHAR AND OTHERS** reported in (2024) 10 Supreme Court Cases 605 has observed that “*in a case where demand for justice is so compelling, a constitutional Court would exercise its jurisdiction with a view to promote justice and not to defeat it.*” The Hon'ble Supreme Court in the case of **VIDYA DEVI vs. STATE OF HIMACHAL PRADESH AND OTHERS** reported in (2020) 2 Supreme Court Cases 569 has held that “*delay and laches cannot be raised in a case of a continuing cause of action, or where the facts shock judicial conscience of the Court. Moreover there is no period of limitation for Courts to exercise Constitutional jurisdiction to do substantial justice.*” In the present case the action of the year 2019 has been challenged in writ petitions filed in the year 2023. The process of appointment of the 313 voluntary teachers in the name of regularization, admittedly was not done by any advertisement or public announcement, therefore, it cannot be presumed that the petitioners were aware of such regularization, that being the position, this Court holds that the challenge is well within time, as such the decisions cited on behalf of the respondents on the issue of limitation need not be discussed.

28. The National Council for Teacher Education by its notice dated September 03, 2001 had framed The National Council for Teacher Education

(Determination of minimum qualifications for recruitment of teachers in schools) Regulation, 2001. In supersession of the said regulation, The National Council for Teacher Education *(determination of minimum qualifications for persons to be recruited as education teaches and physical education teachers in pre-primary, primary, upper-primary, secondary, senior secondary or intermediate schools or colleges)* Regulation, 2014 was notified on November 12, 2014. Graduate in Bachelor of Education (B.Ed.) since from the date of the first notification, was the mandatory training qualification of the teachers for Secondary and Higher Secondary Schools, most of the voluntary teachers did not have the said requisite training qualification at the time of their initial engagements as voluntary teachers, the said shortcoming, even if is ignored, but at the time of their appointment in the name of regularization in the year 2019, they must possess the said training qualification. It appears from the list of 313 teachers annexed with the supplementary affidavit of GTA filed on April 29, 2025 that they did not have the said training qualification, all of them acquired such qualification after their appointment in the name of regularization. The shortfall of the said mandatory qualification cannot be made good by acquiring the same subsequently. The Hon'ble Supreme Court in the case of **ANAND KUMAR YADAV (supra)** has held that proper qualification is mandatory, cannot be waived. The decisions of the Hon'ble Supreme Court in the case of **CHANDER MOHAN NEGI (supra)**, in the case of **MALATHI DAS (supra)** and in the case of **RAM SWARUP (supra)** are of no help for the GTA as those decisions are clearly distinguishable in facts.

29. The decision of the Hon'ble Supreme Court in the case of **DR. M.S. MUDHOL (supra)** cited on behalf of GTA is no pointer to the issue under consideration. The decisions of the Hon'ble Supreme Court in the case of **SRINIVASA BHAT (supra)**, in the case of **MOHINDAR SINGH GILL (supra)** and the decision of the Hon'ble Division Bench of this Court in the case of **ANIL KUMAR XALXO (supra)** are not applicable in the facts and circumstances of the present case. At the conclusion of the argument, Mr. Biswaroop Bhattacharya, learned advocate, has filed the copy of the judgment dated December 03, 2025 passed by the Hon'ble Division Bench in MAT 873/2023 (**WEST BENGAL BOARD OF PRIMARY EDUCATION AND ANOTHER vs. PRIYANKA NASKAR AND OTHERS**) and other analogous appeals. I do not find any relevance of the said judgment in the present context.

Conclusion:

Summing up the discussion made above, this Court holds that the appointment of 313 voluntary teachers in the name of regularization, whose particulars have been disclosed in the supplementary affidavit filed by GTA on April 29, 2025 is illegal, accordingly, the impugned letter bearing no. **254-SE/S/4A-1B/15(PT-III)** dated **March 08, 2019** whereby and whereunder the engagements of 313 voluntary teachers were regularized by the Principle Secretary, School Education Department, Government of West Bengal is set aside and quashed.

The connected applications being CAN 06 of 2025 and CAN 07 of 2025 filed by the respondent nos. 7 and 8 are dismissed without any order as to costs.

The writ petitions be placed before the next available Circuit Bench to answer the other pending issues.

Records be sent down immediately.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BISWAJIT BASU, J.)

LATER

After delivery of judgment, learned advocate for the respondent nos. 13-132, learned advocate for the respondent nos. 9-12 & 133-294 and the learned advocate for the respondent nos. 7 & 8 have prayed for stay of operation of the judgment and order passed today, prayer is considered and rejected.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BISWAJIT BASU, J.)