

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

HON'BLE MR. JUSTICE ABHIJIT GANGOPADHYAY

WPA 10457 of 2021

**Supratim Maity & Ors.
-Versus-
State of West Bengal & Ors.**

For the petitioners	:	Mr. Ekramul Bari Mr. Sk. Imtaj Uddin
For the Respondent	:	Mr. Mrinal Kanti Ghosh
For the State	:	Mr. Supriyo Chattopadhyay
Heard on	:	23.06.2021 & 25.06.2021
Judgment on	:	20.07.2021

Abhijit Gangopadhyay, J .:

1. This writ application centres around a letter of the Government of West Bengal School Education Department (Elementary Education Branch) bearing No. 209-SE(E)/PTTI-7/2011 dated 04.03.2013 (hereinafter referred to as the said letter). This letter speaks about some terms and conditions on fulfilment of which

‘A’ category scale of pay may be given to the Primary School Teachers.

2. This letter was written by the Joint Secretary School Education Department of West Bengal to the Chairman, District Primary School Council, Purba Medinipur. The body of the letter is required to be reproduced:

“In inviting a reference to your letter vide No 1926/ES dt. 09.01.2013 and without prejudice to earlier orders of this Department in this regard I am directed to say that in terms of order of the National Council for Teacher Education vide No 62-5/2008/NCTE/N&S (Pt)/A53953 dt. 04.07.2012 and subsequent clarifications issued by this Deptt. vide No. 389(38)-SE(Ee)/PTTI-7/2011 dt. 13.08.2012 and 801(38)-SE(Ee)/PTTI-7/2011dt. 02.11.2012 the following categories of Primary School Teachers shall be treated as trained teachers and they may be allowed ‘A’ category scale of pay:-

- i) Teachers who have completed 2 years Diploma in Elementary Education (D. El. Ed) from NCTE recognised institutions before/after their entry in service:

Provided in-service teachers will be allowed ‘A’ category scale of pay from the date of attainment

of such qualification of D.El.Ed. However persons already possessing D.El.Ed qualification before their entry as a Pry. School Teacher, may be allowed 'A' category scale of pay at the time of their joining the post.

ii) Teachers completed one year Diploma in Primary Teacher Training Course and appointed after 31.12.2005 and subsequently covered one year Bridge Course through NCTE recognised Institution:

Provided such category of teachers may be allowed 'A' category scale of pay from the date of their joining the post or the date of attainment of the qualification whichever is later.

iii) Teachers who have attained 1 yr./2 yrs. Diploma in Elementary Education from State recognised institutions and appointed as teacher on or before 31.12.2005 shall be treated as 'trained teacher':

iv) Teachers who have attained degree/diploma viz. D.Ed (Special Education) or B.Ed. (Special Education) from RCI recognised institution and subsequently covered a 6 months' course in elementary education from NCTE recognised institution.

v) Teachers who possessed B. Ed degree and appointed before 01.01.2012 and subsequently completed 6 months' course from NCTE recognised institution in elementary education.

vi) Teachers appointed prior to 01.07.1996 and also obtained B.ED/ B.T./ PGBT degree/ diploma prior to 01.07.1996 may be allowed 'A' category scale of pay.

The above guidelines may be followed in disposal of matters related to granting of 'A' category scale of pay to Primary School Teachers".

3. In the writ application the petitioners have prayed for 'A' category scale of pay from the date of their appointment in the year 2010 instead of the year 2014 from when they have been given the 'A' category scale of pay.

They have also prayed for arrear of pay along with interest @ 12% per annum forthwith.

4. The petitioners have alleged ambiguity in clause (ii) of the said letter and prayed for suitable amendment of the said letter by clarifying clause (ii) by removing the ambiguity and granting them 'A' category scale of pay from the year 2010.

They have also prayed for suitable amendment and/or modification of the clause (iii) of the said letter by removing the discrepancy.

All of the above prayers appear from prayers (b), (c) and (d) of the writ application.

5. Said letter speaks about
 - (a) Who are to be treated as trained teachers and
 - (b) To whom “A” category scale of pay may be allowed.
6. The letter covers 6 (six) classes of Primary Teachers. First three classes are being taken into consideration in this matter for getting a clear picture of the classification. Petitioners have referred to paragraphs (ii) and (iii) only (quoted above) and not the other paragraphs.

Let us see paragraphs (i), (ii), (iii) of the said letter separating the contents in parts for understanding the meaning thereof without any doubt.

A. Paragraph (i)

- (a) Teachers who have completed 2 (two) years Diploma in Elementary Education (hereinafter referred to as the diploma);
- (b) from NCTE recognised Institutions;
- (c) before or after their entry in service.

Proviso to paragraph (i) says:

- (a) In service teachers who have attained the qualification while in service (i.e. completed the diploma after entering into service) would be granted ‘A’ category scale of pay from the date of attainment of such qualification; and
- (b)** Teachers who have entered in service with the diploma (i.e. completed the diploma before entering in service) may be allowed ‘A’ Category Scale of Pay from the date of joining.

When, getting ‘A’ Category scale of pay depends upon completing the professional qualification (i.e. the Diploma) there is no unreasonableness in the above classification.

One class of Teachers obtained the diploma after joining service and the other class obtained the diploma before joining service. These 2(two) classes can be distinctly found on the basis of their attainment of qualification. Therefore there is no discrimination and unreasonableness found in the above classification.

B. Paragraph (ii)

- (a) Teachers who have completed one year diploma in primary teachers training course;
- (b) appointed after 31.12.2005; and
- (c) subsequently completed one year bridge course through NCTE recognised institutions.

(Emphasis mine)

From the proviso of this paragraph (ii) it becomes clear that:

One class of Teachers are those who were appointed after 31.12.2005 but did not have the required qualification and the other class is, who got appointment after 31.12.2005 and had the required qualification (i.e. one year diploma in Primary Teachers Training Course and bridge course from NCTE recognised institutions).

Those Teachers who did not have the said required qualification had to be qualified in one year bridge course and as they had already been appointed without undergoing and completing the bridge course, they could only complete the bridge course during their service. Therefore, they could only get the 'A' category scale of pay on getting proper and full training qualification (i.e. one year Diploma in Primary Teachers Training Course which they had while entering in service and one

year Bridge course which they did not have while entering in service) from the date of attainment of the one year bridge course when the required professional qualification became complete and not before that. Therefore if they are given 'A' Category Scale of Pay, it can only be given from the date of attainment of the qualification.

The teachers who joined after 31.12.2005 with the required qualification (i.e. one year Diploma in Primary Teachers Training Course and bridge course from NCTE recognised Institutions) they may be allowed 'A' Category scale of pay from the date of joining since on the date of joining such teachers had the required qualification; therefore in such classification also no unreasonableness or discrimination is found.

C. Paragraph (iii)

- (a) Teachers who have attained 1 year/2 years diploma in elementary education;
 - (b) From the State recognised institutions;
 - (c) Appointed as teachers on or before 31.12.2005.
- Shall be treated as 'trained teacher'.

The paragraph (iii) is quite clear and it has no proviso like paragraphs (i) & (ii).

7. The Petitioners have alleged in the writ application that from the said later two classifications have been made amongst the similarly circumstanced School Teachers under clause (ii) & (iii) of the said letter. Such allegation is wholly incorrect.

On a reading of clause (ii) & (iii) huge difference is found between teachers covered under clause (ii) and the teachers covered under (iii).

Clause (ii) covers the teachers who had one year Diploma in Primary Teacher Training Course whereas clause (iii) covers 1 year/2 years Diploma in Elementary Education.

Again, clause (ii) is for the teachers who did not obtain their Primary Teacher Training Course from State recognised Institutions whereas clause (iii) is for the teachers who obtained the Diploma in Elementary Education from State recognised Institutions.

Therefore, on the basis of the qualifications i.e. “Primary Teacher Training Course” and “1 year/2 years Diploma in Elementary Education” and from the view point of the nature of the institutions (non-government institutions vis-a-vis state recognized institutions) from where they obtained their professional qualification, intelligible differentia in making the classification is found.

8. Therefore, it is not that similarly circumstanced persons have been classified unreasonably without any basis. On the basis of qualification and on the basis of character of the Institutions the distinctions between two classes of teachers are clear.
9. The expression “Primary School Teacher” outwardly and superficially shows a class i.e. “Teacher” but when we delve into the matter a little deeper we would see that differences of qualifications and differences in the nature of the Institutions from where professional qualifications were obtained do exist amongst the Primary School Teachers. While granting ‘A’ category scale of pay when the State has gone deeper from the surface on reasonable ground of the superficial class namely “teacher” and while considering the difference of qualification, subsequent

attainment of required professional qualification by way of a bridge course and the date of joining and date of attaining the qualification, the State has made no mistake in classifying the Primary School Teachers in different categories. Such classification is perfectly justified and based on perceivable facts from which intelligible differentia is evident. Such classification passes the test of intelligible differentia. Objective (sought to be achieved by making such classification) is deciding the date of attaining required qualification from when 'A' category scale of pay can be given to different classes of teachers having differences in training qualification and natures of institutions from where the teachers obtained their qualifications. Some Teachers can be given the 'A' category scale of pay on the basis of their qualification from the date of their joining; some can be given from the date of attainment of the required qualification. Therefore the allegation of unreasonable classification as appears from paragraph 6, paragraph 10 and paragraph 14 of the writ application does not have any basis.

- 10.** In paragraph 7 of the writ application the petitioner has referred appointment letter of a person making certain allegations against the said person alleging that he got his appointment in the year 2006 with one year Primary Teachers Training course but was allowed 'A' category scale of pay from the date of appointment. The appointment letter given to that person appears from annexure P-5 (at page 64) of the writ application. But neither the person named in annexure P-5 has been made a party respondent in the writ application nor does it appear from the said annexure that the said person had only one(1) year PTTE

qualification as alleged. Therefore such allegation is wholly irresponsible. By filing a writ application the petitioners do not get any right to say anything and everything against a person without making him a party and without disclosing the necessary particulars on the basis of which such allegations are made.

Such practice is seriously deprecated by this court.

- 11.** The petitioners have alleged against the proviso stating that it has created anomaly, it has travelled beyond the main provision and it is ambiguous. Such allegations are found in paragraphs 11, 12 and 13 of the writ application. Let us see what could be the purposes of a proviso.

“A proviso may serve four different purposes:

(1) It may qualify or except certain provisions from the main enactment;

(2) It may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;

(3) It may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) It may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision”.

(1985) 1 SCC 591 (S. Sundaram Pillai v. V.R. Pattabiraman).

The proviso in paragraph (ii) of the said letter qualifies the main statement made in said paragraph. The main statement in paragraph (ii) says who are covered for the 'A' category scale of pay and the proviso qualifies the coverage by laying down the starting point of group 'A' scale of pay. Some teachers (as has been discussed above) would get that scale from the date of joining and some teachers would get the scale from the date of attainment of the qualification. Therefore the allegations that the proviso creates anomaly, it travels beyond the main provision, it is ambiguous, are all baseless and frivolous and there is no substance in such allegations in respect of the proviso in paragraph (ii) of the said letter. The petitioner has also alleged an arbitrary cut off date being 31st December 2005. But the petitioner has not made any submission from the bear or has not made any pleadings in the writ application as to why the cut off date is arbitrary. A cut off date can be provided by an executive order. However this point has not been pressed by the petitioners.

- 12.** For the reason as aforesaid I do not find any merit in the writ application and the same is dismissed, however without any order as to costs.

(Abhijit Gangopadhyay, J)