

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

Present:

**The Hon'ble Justice Rai Chattopadhyay**

**WPA 24257 of 2017**

**Sukumar Murmu  
Vs.  
The State of West Bengal & Ors.**

**For the Petitioner** : Mr. Biswaroop Biswas  
: Mr. Dwarika Nath Mukherjee

**For the State** : Ms. Tuli Sinha

**Judgment on** : **09.12.2025**

**Rai Chattopadhyay, J. :-**

- 1.** The issue involved in this writ petition relates to refusal to the petitioner post graduate scale of pay, pursuant to his obtaining Master's degree in Bengali.
- 2.** The petitioner joined in the respondent school on June 29, 1994, as an Assistant Teacher. He has joined as a graduate teacher and his appointment was approved vide Memo dated September 19, 1994. Subsequently, the petitioner got enrolled to pursue Master's Degree course, through correspondence course, organized by the Burdwan University. Ex post facto permission was granted to him by the School Managing Committee to pursue such course. The recommendation of the managing committee was forwarded to the

District Inspector of Schools, Secondary Education, Burdwan/respondent no. 3 for grant of permission to the petitioner, on May 02, 2002.

3. The writ petitioner has qualified in the Master's Degree on April 18, 2004.
4. Thereafter, the petitioner has prayed before the District Inspector of Schools, Secondary Education, Burdwan/respondent no. 3 for grant of post graduate scale of pay to him, in view of his enhanced qualification. Initially, vide Order dated June 20, 2004, the petitioner's prayer as above, was rejected by the said respondent authority. That prompted the petitioner to move this Court by filing a writ petition. In the same, the Court has been pleased to set aside the order of rejection for grant of higher pay scale to the writ petitioner and directed the said authority to consider the petitioner's grievance and prayer as above, afresh, by dint of its order dated December 21, 2016 [ in WP 29921(W) of 2016].
5. The writ petitioner's grievance and prayer as above, was considered by the respondent no. 3 again and the resultant order is that dated May 22, 2017, as impugned in the present case. The following reasons have been cited.
6. Firstly, that the petitioner has been appointed for a post meant for graduate candidate. Having been appointed in a post meant for

graduate candidate, he cannot seek or obtain pay scale other than that allowable to a graduate candidate.

7. Next is that the petitioner had not obtained any prior permission from the authorities before getting enrolled for the Master's Degree course on correspondence.
8. Further, it has been stated that the staff pattern of the school would not allow grant of any higher pay scale to the writ petitioner.
9. Learned Advocate for the petitioner, Mr. Biswaroop Biswas has submitted that the grounds upon which the respondent no. 3 has turned down the petitioner's prayer for grant of higher pay scale, are unfounded and not based on any sound legal principles. He submits that, petitioner has been granted permission by the school managing committee and its recommendation has been duly forwarded to the respondent no. 3. However, neither the school nor the petitioner has ever received any reply from the concerned respondent. He says that hence, the same should not be construed as any latches on part of the writ petitioner in obtaining permission. He has further stated that Government Order No. 155-SE(B) dated July 13, 1999, cannot be interpreted in a way detrimental to the interest of the writ petitioner. In this connection, he has referred to a Judgment of the Hon'ble Supreme Court in the case of **Delhi Metro Rail Corporation Ltd. Vs. Tarun Pal Singh and Others** reported in **2018 14 SCC 161**. In

this regard, he has submitted that '*proviso*' of a substantive legal provision is not to be read in isolation, without reference to the principal provision to which the proviso adds to. Further, Mr. Biswas would submit that it is a settled law that staff pattern of the school has been determined only for proper distribution of staff in different groups in an institution, which has no bearing or nexus as to the grant of higher pay scale to an eligible teacher. So far as the petitioner is concerned, according to Mr. Biswas he, after being qualified in the Master's Degree, would be eligible for grant of higher pay scale, in accordance with law.

- 10.** The State has contested in the case by filing a report of the District Inspector of Schools, Secondary Education, Purba Bardhaman dated November 29, 2024. By dint of the same, the said respondent authority has denied and disputed the allegation of any illegality or impropriety in its order dated May 22, 2017. According to said respondent in the factual background of the present case, the writ petitioner would not be eligible for any relief as prayed for.
- 11.** The petitioner had joined in service on June 29, 1994 and became qualified in Master's degree on April 18, 2004. In between, he took steps for seeking permission of the authorities by making his prayer before the school managing committee. However, allegedly the petitioner has made his prayer only after being enrolled in the course and thus, in violation of the Rules. Be that as it may, the

school managing committee has allowed his prayer and recommended before the respondent no. 3 for its assent.

**12.** In view of the fact that the school managing committee has condoned the irregularity, if any, present in the application of the petitioner for permission, there is no further scope for the respondent no. 3 to urge regarding the petitioner's ineligibility pursuant to such alleged irregularity of delayed filing of the application by him. Instead, by dint of the recommendation of the school managing committee, the delay, if any, in filing the application by the writ petitioner has been duly regularized.

**13.** Furthermore, given that the school managing committee's recommendation has not received a response from respondent no. 3, whether affirmative or negative, the Court opines that the argument presented by said respondent concerning the petitioner's lack of prior permission is untenable. On the contrary, it appears that the petitioner on his part, has complied with the necessary formalities and cannot be held responsible for any inaction in this regard by the respondent no. 3.

**14.** In this connection, the following portion of the Judgment of this Court dated June 14, 2012, in WP No. 3266 (W) of 2012, as referred to by the petitioner would be relevant.

***“It is necessary to mention here that at the relevant time when the petitioner improved his qualification there was no provision under which a teacher was required to take***

***prior permission from the concerned District Inspector of Schools (SE) for improving his/her educational qualification. The concept of seeking prior permission from the District Inspector of Schools (SE) through the Managing Committee of the school authority was introduced for the first time in 2007 in the Government Order dated 27<sup>th</sup> November, 2007.”***

- 15.** Government Notification No. 155-SE(B) dated July 13, 1999, has brought in amendments as to certain portions of earlier Notification No. 25/SE(B)/IM-102/98 dated February 12, 1999 (i.e. ROPA, 1998). In place, and stead of Clause 12(3) in ROPA, 1998, the following has been inserted:-

***“All teachers, including physical education teachers and librarians of secondary schools who have improved/will improve their qualifications who were appointed with higher qualification in the subjects or group relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualifications with effect from the 1<sup>st</sup> January, 1996 or the date of improving qualifications whichever is later.”***

- 16.** Vide the notification No. 155-SE(B) dated July 13, 1999, the petitioner is eligible to be allowed only the scale of pay as per his initial qualification. On careful perusal of the said provision, it is found that, the ‘proviso’ that higher qualified teachers, if appointed, through West Bengal School Service Commission, shall be fixed in a pay scale as per his qualification mentioned by the West Bengal School Service Commission, would definitely mean only to the teachers, who have been appointed by dint of recommendation of the West Bengal School Service Commission.

So far as this petitioner is concerned, it appears that he has been appointed much prior to coming into force of The West Bengal School Service Commission Act, 1997.

- 17.** As to how the ‘proviso’ of a section of law should be dealt with, the Court has been pleased to discuss the same in **Delhi Metro Rail Corporation Case (Supra)**, in the following words:-

*“(f) In S. Sundaram Pillai and Others vs. V.R. Pattabiraman and Others, (1985) 1 SCC 591, this Court has elaborately considered various decisions with respect to the proviso and has discussed the matter thus:*

*29. Odgers in Construction of Deeds and Statutes (5<sup>th</sup> Edn.) while referring to the scope of a proviso mentioned the following ingredients:*

*“P. 317. Provisos – These are clauses of exception or qualification in an Act, excepting something out of, or qualifying something in, the enactment which, but for the proviso, would be within it.*

*P. 318. Though framed as a proviso, such a clause may exceptionally have the effect of a substantive enactment.”*

*30. Sarathi in Interpretation of Statutes at pages 294-295 has collected the following principles in regard to a proviso:*

*(a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.*

*(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.*

*(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.*

*(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation: but when it is*

*clear, a proviso cannot imply the existence of words of which there is no trace in the section.*

*(e) The proviso is subordinate to the main section.*

*(f) A proviso does not enlarge an enactment except for compelling reasons.*

*(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.*

*(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.*

*(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.*

*(j) When a proviso may sometimes contain a substantive provision.*

**31. In the case of *Local Government Board vs. South Stoneham Union*, 1909 AC 57, Lord Macnaghten made the following observation:**

*“I think the proviso is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate.”*

**32. In *Ishverlal Thakorelal Almaula vs. Motibhai Nagjibhai*, AIR 196 SC 459, it was held that the main object of a proviso is merely to qualify the main enactment. In *Madras and Southern Mahrata Railway Co. Ltd. vs. Bezwada Municipality*, AIR 1944 PC 71, Lord Macmillan observed thus:**

*“The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case.”*

Hence by applying the ratio thereof in case of the present petitioner, the said notification appears to have no manner of application.

**18.** So far as the contention of the respondent that staff pattern of the respondent school would not permit the petitioner to be granted

with the higher pay scale, the Court finds that the law has now been well settled by dint of various judicial pronouncements that the staff pattern would confer for appropriate organization and distribution of staff of an institution in different groups. The Government Order in this regard i.e. No. 670-SE(S) dated September 4, 2018, would not in any manner whatsoever, restrain an eligible person for grant of higher pay scale, on the ground of staff pattern provided therein. In this regard, one may refer to the Judgment of this Court in ***Partha Chatterjee Vs. State of West Bengal & Ors.*** reported at ***2004 SCC OnLine Cal 31.***

- 19.** On the discussion made as above, the Court finds the grounds taken by the respondent no. 3 to refuse the petitioner's prayer for grant of higher pay scale, in the impugned order dated May 22, 2017, to be not commensurate with the settled legal principles and in due consideration of the attending facts and circumstances of the case. Instead, the refusal on the said grounds by the said respondent vide the impugned order appears to be an unreasonable and arbitrary exercise of power by the same, thereby denying the petitioner his legitimate claim of higher scale of pay pursuant to his obtaining higher qualification. The said impugned order dated May 22, 2017, is thus liable to be set aside being de hors the law.
- 20.** On the premise as above, this writ petition is disposed of with the directions as mentioned herein below:-

- i. The impugned order dated May 22, 2017, by the respondent no. 3/District Inspector of Schools, Secondary Education, Burdwan be set aside;
- ii. The petitioner shall be granted pay scale meant for post graduate teacher with effect from the date, following the last date of his examination in Master's Degree course;
- iii. The respondent no. 3 shall immediately take steps for refixation of pay scale of the petitioner and granting him the arrear salary as stands due and outstanding;
- iv. The entire exercise as above, should be concluded by the respondent no. 3 within a period of four weeks from the date of communication of copy of this order.

**21.** The writ petition is allowed and disposed of.

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

**(Rai Chattopadhyay, J.)**