

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.7138/2007**

% **16<sup>th</sup> February, 2017**

MR. P.D. SHARMA AND ANR. .... Petitioners

Through: Mr. S.S. Nehra, Advocate with  
Mr. Neeraj Dutt Gour, Advocate  
and Mr. Rakesh Kumar,  
Advocate.

versus

GOVERNMENT OF NCT OF DELHI AND ORS. .... Respondents

Through: Mr. Sumit K. Batra, Advocate  
for respondent Nos.1 and 2.

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. By this writ petition under Article 226 of the Constitution of India, the two petitioners claim interest on account of delay in payment of arrears granted to them of a senior scale of TGT. Interest is claimed from 1.4.1997 till 7.1.2003 when the amounts due as senior scale were paid. Interest is claimed at 24% per annum. Petitioners challenge the impugned order of the respondent no.2/Director of Education (DOE) dated 21.4.2007 by which the respondent no.2/DOE has dismissed the claim for interest on the ground that there is no

provision in law for payment of interest on arrears paid of pay and allowances.

2. Counsel for the petitioner argues that the petitioners admittedly were entitled to senior scale, and which is not disputed by the respondent no.2/DOE or the respondent no.3/school, and therefore since the school in question is an aided school of which 95% aid is granted by the DOE which has supervising responsibility, therefore if there is delay in payment of arrears of senior scale, the liability of interest must also fall upon the DOE.

3. Learned counsel for the respondent no.2/DOE on the contrary argues by placing reliance upon un-numbered paras 5 and 6 of the impugned order dated 21.4.2007 to argue that the respondent no.2/DOE was not responsible for any delay in grant of senior scale because the delay had occasioned on account of respondent no.3/school not giving the necessary papers and because of such delay sanctions with respect to senior scales of two petitioners in this case ultimately were given only on 1.11.2002, and consequently if there is any liability towards interest for the delayed payment of arrears of senior scale, the same lies with the school management.

4. In order to appreciate the rival contentions of the counsels for the parties, let me reproduce, at this stage, the impugned order of the respondent no.2/DOE dated 21.4.2007, and which order reads as under:-

**“ORDER**

**WHEREAS**, a Writ Petition was filed vide CWP No.3261 by Sh. P.D. Sharma and others against the Management, Baij Nath Sec. School and Director (Education) and others. The Hon’ble Court passed an order on 14/02/07 & directed that both the parties will appear before the Director (Education) on 23/03/07 & supply a copy of there respective computations. The Director (Education), Respondent No.3 shall grant the opportunity of hearing to both the parties and dispose off the matter within four weeks thereafter.

**AND WHEREAS**, the School Management and the concerned persons were asked to appear on 30/03/07 alongwith the calculation of their respective.

**AND WHEREAS**, both the parties were heard at length and all the written statements and claims were examined by the Department.

**AND WHEREAS**, Sh. P.D. Sharma, Petitioner No.1 and Sh. L.C. Sharma, Petitioner No.4 have claimed the interest of Rs.69,971/- and Rs.1,02,775/- respectively @ 24% on arrears of senior scale from 01/04/97 till the date of payment.

**AND WHEREAS**, the school management submitted that the charge of DDO ship of school was being looked after by the EO-25 w.e.f. 29/11/99 till date, and therefore, the liability of payment of arrears and interest lies with them.

**AND WHEREAS**, the plea taken by the Department is that the management of the school failed to submit grant-in-aid papers complete in every respect nor was it able to rectify in time the deficiencies which were pointed out and communicated to the school, vide letters dated 16/02/97, 29/12/98, 31/12/98 & 16/03/99. Since, the final sanction in respect of Sh. P.D. Sharma, Petitioner No.1 & Sh. L.C. Sharma, Petitioner No.4 were issued on 01/11/02, the liability of delayed payment lies with the school management.

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**AND WHEREAS**, with regards to amount of interest the school management reiterated that the liability of payment of interest lies with the Department as in the case of Sh. P.D. Sharma.

**AND WHEREAS**, as regards contradiction between the statement of the teacher and the school management, it is on record of the school that his pay in the senior scale was fixed on 01/01/86 with DNI being 01/01/87.

**AND WHEREAS,** the Department further submitted that rectification from 01/07/86 to 01/01/87 was done by the Management of the school by attesting the cutting. Thus it is clear that the change of date of fixation was carried out by the school management and not by the Department.

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**NOW THEREFORE,** I, VIJAY KUMAR, after going through the submissions and all the office records and prevailing rules of the Govt., order that the claim of Sh. P.D. Sharma regarding payment of interest @ 24% w.e.f. 01/04/97 till date of payment is not maintainable as there is no provision for payment of interest on the arrears of pay and allowance.

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Sd/-  
(VIJAY KUMAR)  
DIRECTOR OF EDUCATION”

5. No doubt, the respondent no.2/DOE is not justified in holding that interest is not payable because there is no provision for payment of interest inasmuch as, liability of interest is implicit in delayed payment, and once there is delay in payment, interest is bound to be paid, however, in my opinion, the learned counsel for the respondent no.2/DOE is justified in arguing that the impugned order dated 21.4.2007 is liable to be sustained on account of un-numbered paras 5 and 6 of the impugned order which shows that it was the management of the respondent no.3/school which was responsible for the delay, and hence if interest is to be paid then interest must be paid not by the respondent no.2/DOE but by the respondent no.3/school.

6. (i) As regards what is stated in un-numbered paras 5 and 6 of the impugned order dated 21.4.2007, there is nothing which is stated in the writ petition as to how it was the respondent no.2/DOE which is responsible and not the respondent no.3/school, and the only argument urged before this Court is that the respondent no.2/DOE has overall supervising responsibility, and therefore it is the respondent no.2/DOE which should be liable to pay interest.

(ii) I cannot agree. No doubt there is delay in payment of arrears of senior scale to the two petitioners, but in view of what is stated in the un-numbered paras 5 and 6 of the impugned order dated 21.4.2007 and to which there is no answer on behalf of the petitioners, interest in the present case cannot be awarded against the respondent no.2/DOE and interest can only be awarded against the respondent no.3/school. Also, the interest cannot be awarded at 24% per annum simple but interest is only awarded at 6% per annum simple from 1.4.1997 till 7.1.2003.

7. I may also note that really result of this case will have no effective bearing because it is found that the respondent no.3/school is closed and even though this Court is granting interest to the petitioners as against the respondent no.3/school, this order possibly may not be capable of implementation.

8. In view of the above, this writ petition is allowed by granting interest to the petitioner at 6% per annum simple from 1.4.1997 till 7.1.2003, with the further directions that interest will be payable not by the respondent no.2/DOE but only by the respondent no.3/school.

9. Petition is accordingly disposed of in terms of aforesaid observations.

**FEBRUARY 16, 2017**  
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**VALMIKI J. MEHTA, J**

