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

% *Date of decision : 6th September, 2018*

+ W.P.(C) 160/2017

LATA RANA & ORS

..... Petitioners

Through: Mr. Ashok Agarwal and
Mr. Kumar Utkarsh, Adv.

versus

D.A.V. PUBLIC SCHOOL & ORS

..... Respondents

Through: Mr. Anurag Lakhotia, Adv. for
R-1.

Mr. Sanjoy Ghose, ASC,
GNCTD with Mr. Rhishab
Jetley, Adv. for GNCTD/R-3.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

1. The petitioners, who are Teachers working in the School of Respondent No.1 (hereinafter referred to as “the School”) had, in this writ petition, invoked Section 10 of the Delhi School Education Act, 1973 (hereinafter referred to as “DSE Act”) claiming various benefits, as were granted to teachers and other employees similarly situated in other schools run by the Delhi Government.

2. At the time of issuing notice on 10th January, 2017, learned counsel for the petitioner had made a statement that the reliefs prayed in this writ petition, to the extent of ACP/MACP benefits and travelling allowance were not being pressed in these proceedings and that separate proceedings would be instituted for the said purpose.

3. As such, the present proceedings would be limited to the reliefs prayed qua grant of benefits of the revised pay scale pursuant to the recommendations of the 6th Central Pay Commission (hereinafter referred to as “6th CPC”) and the 7th Central Pay Commission (hereinafter referred to as “7th CPC”).

4. It may be noted, here, that the benefits of revised scales under the 6th CPC and 7th CPC were applicable w.e.f. 1st January, 2006 and 1st January, 2016 respectively.

5. The petitioners were employed in various capacities, by Respondent No. 1, on dates between 1996 and 2011 and have been serving Respondent No. 1, since then.

6. Respondent No. 1, it may be noted, is an unaided private recognized school, governed by the provisions of the DSE Act. Section 10 of the said Act reads thus:

“10. Salaries of employees.—(1) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority:

Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognised private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such school to bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority:

Provided further that the failure to comply with such direction shall be deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of section 4 shall apply accordingly.

(2) The managing committee of every aided school shall deposit, every month, its share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator and the Administrator shall disburse, or cause to be disbursed, within the first week of every month, the salaries and allowances to the employees of the aided schools.”

7. Clearly, Section 10 of the DSE Act guarantees employee working in the school, the same pay, allowances and benefits which are paid to their counterparts in the government schools.

8. The grievance of the petitioner is that, despite the mandate of the said provision, the pay of the petitioners, consequent on pay revision pursuant to 6th CPC, was fixed at a much lower level w.e.f. 1st January, 2006, , as compared to employees holding the same posts in schools, run by the Delhi Government.

9. The attempts of the petitioner at obtaining relief from the respondents having failed, the petitioners are before this Court in the present proceedings.

10. The claims of the petitioners, in these proceedings stand covered by the judgment of a learned Single Judge of this Court in ***Sadhna Payal v. Director of Education, ILR (2010) III Delhi 22***, which was upheld by the Division Bench of this Court, in LPA 286/2010, vide order dated 11th May, 2012.

11. The decision in *Sadhna Payal* (supra)

11.1 *Sadhna Payal* (supra) was filed by teachers in the Rukmini Devi Jaipuria Public School, seeking issuance of directions to the said school for implementing the recommendations of the 5th Central Pay Commission (hereinafter referred to as “5th CPC”) in their favour, and for payment of revised salaries and other benefits, consequent thereupon, w.e.f. 1st January, 1996.

11.2 It was pleaded, by the school, in that case, that implementation of the 5th CPC recommendations, to teachers in their school, would place a huge financial burden on them.

11.3 The learned Single Judge, adjudicating the matter, noted that there was no dispute that the recommendations of the 5th CPC were to be implemented w.e.f. 1st January, 1996. Due notice was also taken of a circular, issued by the Director of Education to all concerned schools, to implement the recommendations of the 5th CPC from the said date.

11.4 Section 10 of the DSE Act, it was further noted, specifically ordained that “the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority.”

11.5 In view of the unequivocal mandate of Section 10 of the DSE Act, the learned Single Judge held that the respondents, in that case,

had no option but to implement the recommendations of the 5th CPC at par with the manner in which they had been implemented in other schools run by the Government. The argument of the respondent school, to the effect that such implementation would result in a huge burden on it, was found to be unmerited, in view of the law enunciated in the following passage from *Haryana State Minor Irrigation Tubewells Corporation v. G. S. Uppal* 2008 (7) SCALE 44:

“24. The plea of the appellants that the Corporation is running under losses and it cannot meet the financial burden on account of revision of scales of pay has been rejected by the High Court and, in our view, rightly so. Whatever may be the factual position, there appears to be no basis for the action of the appellants in denying the claim of revision of pay scales to the respondents. If the Government feels that the Corporation is running into losses, measures of economy, avoidance of frequent writing off of dues, reduction of posts or repatriating deputationists may provide the possible solution to the problem. Be that as it may, such a contention may not be available to the appellants in the light of the principle enunciated by this Court in *M.M.R. Khan v. Union of India* [1990] 1 SCR 687 and *Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union*, (2000) 1 LLJ 1618SC.

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Thereafter, nothing appears to have happened which may justify the differential treatment. Thus, the Corporation cannot put forth financial loss as a ground only with regard to a limited category of employees. It cannot be said that the Corporation is financially sound insofar granting of revised pay scales to other employees, but finds financial constraints only when it comes to dealing with the respondents, who are similarly placed in the same category. Having regard to the well reasoned judgment of the Division Bench upholding the judgment and order of the learned Single Judge, we are of the view that the impugned judgment warrants no interference inasmuch as no illegality, infirmity or error of jurisdiction could be shown before us”

11.6 Resultantly, the petition filed by Sadhna Payal and her compatriots was allowed by the learned Single Judge in the following terms :

“12. Hence, in the light of the above discussion, I am of the considered view that the petitioners are entitled to the revision in their salaries and other benefits as contemplated in the 5th Pay Commission. Accordingly, direction are given to the respondent no.2 to rejoiner-fix the salaries of the petitioners in terms of the recommendations of the 5th Pay Commission and pay their arrears and other benefits within a period of three months from the date of this order.

With the above directions, the present petition stands disposed of.”

11.7 The School carried the matter before the Division Bench of this Court in LPA 286/2010, which was dismissed *vide* order dated 11th May, 2012, which may be reproduced, *in extenso*, thus:

“1. The learned Single Judge *vide* impugned judgment has directed the appellant school to pay the revised pay scale as recommended by the 5th Pay Commission w.e.f. 1.1.1996. It is an undisputed fact that on the basis of 5th Pay Commission, the pay scales of government teachers were revised w.e.f. 1.1.1996. In terms of Section 10 of Delhi Education Act and Rules framed therein, same pay scales are to be given to the teachers of all the private recognized schools as well. Therefore, we do not find any fault with the directions of the learned Single Judge.

2. We are informed that the appellant school has already implemented the recommendations of the 5th Pay Commission and has given revised pay scale to the respondent teachers w.e.f. 1.4.1997. It has to be given w.e.f. 1.1.1996 on parity with the pay scales granted to the government teachers. The right of the teachers of the appellant s school to get revision in the pay scale from the effective date i.e. 1.1.1996 cannot be denied merely because the appellant could not shift this burden on the student by enhancing the fee which is totally immaterial and irrelevant when the question of revision

of pay scale of the teachers is there. We are informed that for the period 1.1.1996 to 31.3.1997, 50% of the arrears has been paid which shall be adjusted from the arrears which are to be worked out.

3. Mr. Sachdeva, learned Senior Counsel submits that some of the teachers have already settled their claims with the appellant school and have received their payment towards full and final settlement. This can be sorted out between the appellant and those teachers with whom the appellant has settled the disputes.

4. We thus do not find merit in these appeals which are accordingly dismissed with costs quantified @ 15,000/- in each appeal.”

Rival submissions

12. Learned counsel for the petitioner was candid in admitting that the decision in *Sadhna Payal (supra)* applied to the present case on all fours. However, he also sought to submit that the school run by his client catered to students belonging to the poorer strata of the society and that allowing the prayers made in the writ petition would place a huge financial burden on the school, which it would find difficult to bear. Such burden, he submits might even necessitate closure of the school.

13. Apropos the applicability of the 7th CPC recommendations; he submits that the issue of increase of fees to be charged from the students, which would be necessary in case compliance with the 7th CPC were to be mandated, is presently under consideration with the appropriate governmental authorities and is also the subject matter of various proceedings pending in this Court.

14. Keeping in mind these factors, he would submit that it may not be appropriate to direct, at this stage, implementation, by the school, of the recommendations of the 7th CPC, qua the petitioners.

15. He also presses into service the plea of delay and latches, in respect of the claim for benefit of the revised pay scales pursuant to the 6th CPC. He submits that the entitlement of the petitioners, if any, in that regard, arose in 2006, and that the present writ petition is highly belated. At best, he submits, the petitioners could be allowed arrears of only up to three years prior to the date of filing of the writ petition. He relies for the said purpose on the judgment of a coordinate Single Bench of this Court in ***Preeti Sharma v. Ganga International School 2017 II AD (Del) 395***.

16. Mr. Ashok Agarwal, learned counsel for the petitioners seeks to distinguish the decision in ***Preeti Sharma (supra)*** on the ground that the petitioners in the present case were trying to obtain relief, from the respondents, at the administrative level, before approaching this Court which is why the delay in filing the writ petition was occasioned. He also expresses serious reservations regarding the correctness of the judgment in ***Preeti Sharma (supra)*** and exhorts this Court to take a different view in the matter. At this stage, I am not inclined, in the interest of judicial discipline to take a different view from that already taken by the Coordinate Bench in ***Preeti Sharma (supra)***, which, at the very least, is a plausible view.

17. Insofar as the merits of the present case is concerned, there can be no manner of doubt that the issue stands squarely covered by the

judgment of the learned Single Judge as well as of the Division Bench in *Sadhna Payal (supra)*. The pleas urged by learned counsel for the respondents were similar to those which had been urged before this Court in the said case, which were unequivocally rejected.

18. Mr. Anurag Lakhotia, at this stage seeks to submit that, while he had makes the suggestion that his clients school could be closed down, the schools in *Sadhna Payal (supra)* had not offered any such suggestion and points out that, as the Director of Education is also represented in the present proceedings, they could very well take steps to close down the school or take over the school.

19. In my considered opinion, these are aspects which do not arise before me in these proceedings. The prayer of the petitioner in these proceedings is, clearly, to be granted the benefit of Section 10 of the DSE Act and, on that footing, to be extended the benefit of the revised pay scales, under the 6th CPC and 7th CPC, as were granted to employees of schools run by the Government. In view of the unequivocal mandate of Section 10 of the DSE Act, the merit of the scheme cannot be – has not been – disputed.

20. The present writ petition is, therefore, partially allowed. It is held that the petitioner would be entitled to refixation of their pay on the basis of the recommendations of the 6th CPC and 7th CPC, w.e.f. 1st January, 2006 and 1st January, 2016, as was extended to similarly placed employees in schools run by the Delhi Government. However, insofar as the arrears consequent to refixation of pay on the basis of the recommendations of the 6th CPC are concerned, the arrears shall

stand restricted to the period of three years prior to the date of filing of the writ petition.

21. Respondents No. 1 and 2 are directed to comply with this judgment within three months of obtaining a certified copy thereof.

22. The writ petition stands partially allowed in the above terms with no orders as to costs.

C.HARI SHANKAR, J

SEPTEMBER 06, 2018

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