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

% *Judgment Reserved on : 14th August, 2019*
Judgment Pronounced on: 4th November, 2019

+ **LPA. 808/2017**

MANJU SIPAYYA

....Appellant

Through Mr. M. Dutta and Mr. I.C. Kumar,
Advocates

versus

DIRECTORATE OF EDUCATION AND ORS Respondents

Through Mr. Naushad Ahmed Khan, ASC for
R-1/ GNCTD
Mr. Sachin Chauhan, Advocate for
R-2 and R-3.

LPA. 809/2017

MANJU SIPAYYA

..... Appellant

Through Mr. M. Dutta and Mr. I.C. Kumar,
Advocates

versus

DIRECTORATE OF EDUCATION AND ORS Respondents

Through Mr. Naushad Ahmed Khan, ASC for
R-1/ GNCTD
Mr. Sachin Chauhan, Advocate for
R-2 and R-3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH

J U D G M E N T

G.S.SISTANI, J.

1. The present appeal is directed against the judgment dated 26.10.2017 passed by a learned Single Judge of this Court wherein the Single

Judge has held that the appellant herein is not entitled to any relief under the Assured Career Progression Scheme (hereinafter referred to as ACP Scheme) or the Modified Assured Career Progression Scheme (hereinafter referred to as the MACP Scheme).

2. In the above captioned appeal no LPA. 808/2017, the appellant who was appointed as an Assistant Teacher on 09.12.1977, she seeks implementation of the ACP Scheme after completion of 24 years of service as on 01.09.2002. In the above captioned appeal no LPA. 809/2017, the appellant seeks implementation of the MACP Scheme upon completion of 30 years of service as on 01.09.2008, and has consequently sought the arrears of differential salary etc.
3. The brief facts required to be noticed for the disposal of the present appeals are that the appellant was appointed as an Assistant Teacher on 09.12.1977 in the pay scale of Rs.330-10-350 (pre-revised). Thereafter, on 01.08.1978, the appellant was promoted from the post of Assistant Teacher to TGT in the pay scale of Rs.440-20-500. Thereafter, on 01.01.1990, she was granted senior pay scale, which was later revised with effect from 01.01.1996, in terms of the 5th Central Pay Commission.
4. The counsel for the appellant contends that the appellant joined service on 09.12.1977 and was promoted on 01.08.1978. She superannuated on 31.03.2013. For a period of 35 years, the appellant was never promoted. She languished and stagnated at the same post for 35 years.
5. The counsel further states that the appellant has been denied her second financial upgradation on 01.09.2002, under the ACP Scheme

(in the pay grade of Rs. 6500- 10,500/- per month), that came into effect on 09.08.1999 as well as her third financial upgradation on 09.12.2007, having completed 30 years of regular service (in the Pay Grade of Rs. 9300- 34,800/- per month), computed from 01.08.1978, when she received her first promotion. It is therefore contended, that the appellant is entitled to the difference in pay between 01.09.2002 to 01.09.2008 (in the Pay Grade of Rs. 6500- 10,500/- per month) under the ACP Scheme, and between 09.12.2007 to 01.09.2011 (in the Pay Grade of Rs.9,300- 34,500/-) per month, under the MACP Scheme.

6. It is further contended by the counsel for the appellant that by the circular dated 05.10.2008, the Directorate of Education directed all the schools to “..implement the Sixth Pay Commission recommendations..” Additionally, the circular dated 11.02.2009, issued by Directorate of Education permitted all the schools “to raise additional funding for additional requirement on account of the Sixth Central Pay Commission requirements.”
7. Learned counsel contends that under Section 10 of Delhi Education Act, 1973, the aforesaid circulars dated 05.10.2008 and 11.02.2009 are binding on the Respondents. The said section is reproduced hereinunder:

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.

8. The counsel for the appellant contends that the respondent cannot be permitted to argue that the respondents are not bound to implement the 6th Pay Commission/ MACP Scheme. Further, the respondents have given the benefit of MACP Scheme to others who were similarly placed but have excluded the appellant. Reliance has been placed on W.P.(C) 12132/2009 ***T.P. Singh And Ors vs Guru Harkrishan Public School and Ors*** wherein this Hon'ble Court commented on the circular dated 11.02.2009. Paras 2 and 12 of T.P.Singh and Ors (*supra*) have been reproduced hereinunder:

2. It is not disputed that the Director of Education-respondent no.3 has in fact vide order dated 11.2.2009 in exercise of the powers under Sections 17(3), 24(3), 18(4) and (5) of the Delhi School Education Act, 1973 and Rules

50,51,177 and 180 of the Delhi School Education Rules, 1973 and all other enabling powers vide order dated 11.2.2009 directed all the schools in Delhi to implement the Sixth Pay Commission Report with respect to the salaries payable to the teachers. Vide paras 7 and 8 of the said order dated 11.2.2009, it has been directed that arrears be cleared as per the installments given in the said paras.

12. In view of the above, the writ petition is allowed, the respondent no.1- school is directed to implement the Sixth Pay Commission Report with respect to the petitioner in terms of the order dated 11.2.2009 of the respondent no.3/Director of Education. Petitioner will also be entitled to interest on all the arrears payable at 6% per annum simple, provided the arrears are cleared within three months from today, failing which, the rate of interest thereafter would become 9% per annum simple.

9. Reliance has also been placed on a decision rendered by this Hon'ble Court in ***Bindu Sehgal vs Union of India and Ors*** W.P.(C) 586/2001, paras 10 and 12 of which are reproduced hereinunder:

10. A joint reading of the ACP scheme and its terms-extracted above would reveal that it was framed to relieve stagnation of employees with relative fewer- or no-promotional avenues. It assures that other things being equal (i.e. qualifying service, eligibility for promotions under the rules, fulfillment of the bench mark criteria, etc) an employee who is denied promotion solely because of limited vacancies would be conferred a financial upgradation, entirely divorced from the consideration of the vacancy position. The upgradation would result only in a financial advantage.

12. The second part of the first issue or question formulated by the Supreme Court, for decision by this court is whether In terms of the ACP scheme the petitioner could be nevertheless denied the benefit under it, by reason of her previous service in the ministerial cadre in the Central

Government. As noticed previously, the ACP was meant to relieve stagnation for those who could not be promoted, solely because of lack of requisite vacancies. The tenor and terms of the ACP scheme are such that the employee is entitled to the upgradations reckoned from the date of entry into the regular service. This is evident from Paras 3 and 4 of the Annexure to the ACP scheme, extracted below:

“3. The financial benefits under the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions whichever is later;

4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc this would have consequential effect on the second upgradation which would also get deferred accordingly...”

10. Reliance has also been placed by the counsel for the appellant on a judgment of Bombay High Court in ***State of Maharashtra v. Vasant Trevibakrao Chobe***, (2018) 5 Mh.L.J 71, Para 6 and 7 of which are reproduced hereinbelow:

6. One of the notorious features of Government service is that several employees, though eligible and ever willing to be promoted, do not actually secure such promotions, sometimes, during the entire tenure of their service. This stagnation, naturally leads to frustration. The State has consequently adopted schemes for redressal of such situation arising out of lack of sufficient promotional avenues and the consequent stagnation. Broadly, such schemes do not contemplate actual promotions to the next higher post, but by way of consolation, award the pay-scale of the promotional posts, generally, upon an employee stagnating in a particular post for twelve years or twenty

four years respectively. Such schemes, were earlier referred to as Time Bound Promotion Schemes and are now referred to as Assured Career Progression Schemes. The ACP Scheme, with which, we are presently concerned was formulated by the State Government vide G.R. dated 1-4-2010. This G.R. specifically states that the scheme will be applicable with retrospective effect, i.e., from 1-10-2006.

7. The G.R. dated 1-4-2010 makes reference to the objective of the scheme, which is alleviation of the sufferings on account of stagnation. In case of *Dwijen Chandra Sarkar v. Union of India*, (1999) 2 SCC 119, the Supreme Court had occasion to explain the objective of such schemes and further, the importance of such objective, in the interpretation of such schemes. At paras 11 and 12, it is observed thus:

“11. However, the position in regard to “time-bound” promotions is different. Where there are a large number of employees in any department and where the employees are not likely to get their promotion in the near future because of their comparatively low position in the seniority list, the Government has found it necessary that in order to remove frustration, the employees are to be given a higher grade in terms of emoluments — while retaining them in the same category. This is what is generally known as the time-bound promotion. Such a time-bound promotion does not affect the normal seniority of those higher up. 12. If that be the true purpose of a time-bound promotion which is meant to relieve frustration on account of stagnation, it cannot be said that the Government wanted to deprive the appellants who were brought into the P and T Department in public interest — of the benefit of a higher grade. The frustration on account of stagnation is a common factor not only of those already in the P and T Department but also of those who are administratively transferred by the Government from the Rehabilitation Department to the P and T Department. The Government while imposing an eligibility condition of 16 years' service in the grade for being entitled to time-bound promotion, is not intending to benefit only one section of

employees in the category and deny it to another section of employees in the same category. The common factor for all these employees is that they have remained in the same grade for 16 years without promotions. The said period is a term of eligibility for obtaining a financial benefit of a higher grade.” (emphasis supplied) 8. The entire ACP Scheme, with which we are concerned is set out in great detail in the G.R. dated 1-4-2010. The salient features of the ACP Scheme, are as follows:

- i) The scheme is made applicable from 1-10-2006. However, for the period between 1-10-2006 till the date of G.R., i.e., 1-4-2010, the employees will be entitled to only notional benefits and not actual arrears,
- ii) Under this scheme, an eligible employee is entitled for the pay scale of next promotional post twice in his service career i.e. eligible for two financial upgradations on completion of 12 years and 24 years of service,
- iii) In the case of an employee who has been granted time bound promotion/ACP it would be presumed that he got the first benefit of this modified ACP Scheme on that date.
- iv) The second financial upgradation will be available to the employee on completion of 12 years of service from the date of first financial upgradation.

11. Per contra, learned counsel for respondents 2 and 3 contends that the answering respondent is a private unaided school. It generates its own funds and is constructed on the land owned by NC Jindal Charitable Trust. It is submitted that the appellant admittedly got three financial upgradations on being promoted. The appellant was promoted to the post of TGT (Home Science) w.e.f. 01.08.1978 in the pay scale of Rs.440-750/-. Thereafter, the appellant was granted the senior pay scale of Rs.1640-2900/- on 01.09.1990 (Reversed scale of Rs.6500-10,500/-). The appellant was granted a financial upgradation w.e.f. 01.09.2011 in the pay band of Rs. 9300- Rs. 34,800 in the Grade Pay

of Rs.5400 vide an order dated 06.09.2011 (as a special case). Therefore, in light of the promotion and upgradation to senior scale already granted to the appellant, she is not entitled for any further upgradation under the ACP Scheme or the MACP Scheme.

12. Mr. Chauhan further contends that in the absence of any instructions regarding granting benefit of MACP Scheme to the employees working in the private unaided schools, the question of allowing the benefit to the staff working in the un-aided private school is a matter of discretion of the school management keeping in mind the funds that are available. The school has voluntarily implemented the MACP Scheme w.e.f. 01.10.2012 after due scrutiny by the selection/screening committee keeping in view the condition of the school finances.
13. Reliance has been placed on paragraph 14 of the MACP Scheme which was issued by the Department of Personnel and Training vide O.M dated 19.05.2009, wherein it is stated that:

“The MACPS is directly applicable only to Central Government Civilian employees. It will not get automatically extended to employees of Central/ Autonomous/ Statutory Bodies under the administrative control of Ministry/ Department. Keeping in view the financial implications involved, a conscious decision in this regard shall have to be taken by the respective Governing body/ Board of Directors and the administrative ministry concerned and where it is proposed to adopt the MACPS, prior concurrence of Ministry of Finance shall be obtained.”

Thus, the learned counsel for respondents 2 and 3 contends that the implementation of the MACP Scheme in private unaided schools will depend upon the financial implication involved. Mr. Chauhan submits

that it is an admitted fact that respondent no 1, Directorate of Education, has not issued any Guidelines/ Instructions in relation to the implementation of MACP Scheme in respect of a private unaided school and therefore, in such a situation it is not obligatory upon the answering respondents to implement the MACP Scheme from the date, it has been implemented by the Government or other Institutions.

14. Learned counsel for respondents no. 2 and 3 further submits that three points would prove that respondent no. 1 has not given any Guideline or Instructions for the implementation of the MACP Scheme to private unaided schools. Firstly, reliance is placed on an email dated 16.10.2017, which was sent by the Deputy Director of Education to the counsel for the respondent in response to a specific query made by the answering respondent. The same is reproduced hereinunder-

“With reference to your letter dated 15.09.2017, it is to inform you that DoE has not issued any order/guideline for implementation of MACP in Private Unaided Recognized schools to implement the MACP Scheme.

15. Secondly, the counsel relies on the counter-affidavit filed by the respondent no 1 herein in W.P.(C) 1692/2013, wherein paragraph 6 states:

“That the contents of para 6 of the petition under reply are false, frivolous and vehemently denied. It is submitted herein that under the absence of any instructions to Respondent no 1 regarding the provision of benefits to the employees working in unaided private schools under the MACP Scheme, the question of acting in furtherance of it did not arise at that time. It is submitted that the Central Government had approved the MACP Scheme for its civilian employees vide its letter dated 19.05.2009.”

16. Thirdly, the learned counsel relies on the findings of the learned Single Judge in paragraph 8 of the impugned order dated 26.10.2017 which clearly records that “first respondent has not issued any guidelines for the implementation of MACP Scheme in private unaided recognized schools During the course of hearing, this was not disputed by learned counsel for first respondent”
17. It is further submitted by the learned counsel for respondents no 2 and 3 that the financial status of the respondent school is evidently established by the fact that the Audit Report dated 16.09.2018 clearly states that there is no provision for funds to release the arrears of salary for the 7th Pay Commission and that such arrears amount to Rs.3,82,71,539/-. He states that the audited income and expenditure account for the year ending on 31.03.2018 (assessment year 2018-2019) records the deficit of Rs.1,78,32,328/- of expenses over income. Once it is established that the funds with the answering respondent are limited and that the funds to run the school are absolutely self-generated without any financial aid received from the Government, the private unaided school cannot be forced to implement the MACP Scheme from a specific date. Moreover, it is argued by the learned counsel that education has to be imparted to the students keeping in mind that no unnecessary financial burden in the form of fees is transferred to them.

Reliance is placed on the judgment passed by the Hon’ble Supreme Court of India dated 31.10.2002 in the case of ***TMA Pai Foundation***

and Others vs State of Karnataka and Others reported at (2002) 8 SCC 481, para 55 of which is reproduced below:

55. The Constitution recognizes the right of the individual or religious denomination, or a religious or linguistic minority to establish an educational institution. If aid or financial assistance is not sought, then such institution will be a private unaided institution. Although, in Unni Krishnan's case, the Court emphasized the important role played by private unaided institutions and the need for private funding, in the scheme that was framed, restrictions were placed on some of the important ingredients relating to the functioning of an educational institution. There can be no doubt that in seeking affiliation or recognition, the Board or the university or the affiliating or recognizing authority can lay down conditions consistent with the requirement to ensure the excellence of education. It can, for instance, indicate the quality of the teachers by prescribing the minimum qualifications that they must possess, and the courses of study and curricula. It can, for the same reasons, also stipulate the existence of infrastructure sufficient for its growth, as a pre-requisite. But the essence of a private educational institution is the autonomy that the institution must have in its management and administration. There, necessarily, has to be a difference in the administration of private unaided institutions and the government-aided institutions. Whereas in the latter case, the Government will have greater say in the administration, including admissions and fixing of fees, in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions. Bureaucratic or governmental interference in the administration of such an institution will undermine its independence. While an educational institution is not a business, in order to examine the degree of independence that can be given to a recognized educational institution, like any private entity that does not seek aid or assistance from the Government, and that exists by virtue of the funds generated by it, including its loans or borrowings, it is important to note that

the essential ingredients of the management of the private institution include the recruiting students and staff, and the quantum of fee that is to be charged”

18. It is contended by the counsel for respondents no 1 and 2 that the order dated 11.02.2009 issued by respondent no 1 passed under Section 17(3) & 24(3) read with Section 18(4) & 18(5) of Delhi School Education Act, 1973 and Rules 50, 51, 177 and 180 of the Delhi School Education Rules, 1973 is for the implementation of the recommendations of 6th Pay Commission and lay down the guidelines to meet the said financial expenses arising out of the same as well as how to raise the funds. There is no specific Instruction to implement the MACP Scheme for recognized unaided/private schools and as such no guidelines have been made to raise funds for the financial burden arising out of the same. The reliance on the order dated 11.02.2009 by petitioner is thus misplaced. The benefit of the 6th Pay Commission towards revision of pay scale has been granted to the petitioner.
19. The counsel for respondents no. 2 and 3 submits that the petitioner cannot place reliance on Section 10 of the Delhi School Education Act, 1973 as the respondent no. 1 has not mandated the implementation of MACP Scheme for private unaided schools.
20. We have heard the learned counsel for the parties and considered their rival submissions.
21. We have examined the ACP Scheme, the MACP Scheme and the materials placed on record. The appellant has been granted three financial upgradations in her career through promotion or otherwise. The ACP scheme, which came into force w.e.f 09.08.1999, clearly provides that the first financial upgradation has to be granted after 12

years of regular service. It is a matter of record that the appellant was appointed as an Assistant Teacher on 09.12.1977. Thereafter, on 01.08.1978, she got her first financial upgradation wherein she was promoted from the post of Assistant Teacher to TGT. Since the appellant got her first promotion within 12 years of her service, therefore, she is not entitled to the benefit of first financial upgradation under the ACP Scheme.

22. MACP Scheme came into force w.e.f. 01.09.2008. Respondent no. 1, vide its office circular dated 05.10.2008, directed the schools to implement the 6th Pay Commission recommendations, however, no Guidelines have been issued till date for implementation of the MACP Scheme in private unaided recognized schools. Therefore, reliance cannot be placed on Section 10 of the Delhi School Education Act, 1973 as respondent no. 1 has nowhere mandated the implementation of MACP Scheme for private unaided schools. In any case, respondent school has admittedly granted financial upgradation of a higher pay scale with effect from 01.09.2011 to the appellant wherein she was placed in the Pay Band of Rs.9300- 34,800/- with a Grade Pay of Rs.5400/- and after availing the same, the appellant retired in the year 2013.
23. Law is well-settled that maximum autonomy should be given in the administration of private unaided institutions as presence of Government interference in the Administration of such Institutions will undermine their independence. In the case of ***TMA Pai Foundation and Others (supra)***, the Hon'ble Supreme Court held:

“55. ...There, necessarily, has to be a difference in the administration of private unaided institutions and the government-aided institutions. Whereas in the latter case, the Government will have greater say in the administration, including admissions and fixing of fees, in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions...”

24. Applying the law to the facts of the present case, we are of the considered view that the order passed by the Single Judge merits no interference. The appellant is not entitled to any relief under ACP Scheme or MACP Scheme. The appeals are accordingly dismissed.

G.S.SISTANI, J.

JYOTI SINGH, J.

NOVEMBER 4th, 2019//