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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 06.05.2021

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W.P.(C) 928/2019 and CM 13156/2020

KUTTAMPARAMPATH SUDHA NAIR Petitioner

Through: Ms. Indrani Ghosh, Advocate

versus

MANAGING COMMITTEE SRI SATHYA SAI VIDYA

VIHAR AND ANR. Respondents

Through: Mr. Sunil Magon, Adv. for R-1
Mr. Zahid Hanief and
Ms. Manisha Chauhan, Advocates
for Mr. Naushad Ahmed Khan,
ASC, GNCTD

AND

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W.P.(C) 929/2019 and CM 13379/2020

RAJEEV KUMAR DHINGRA Petitioner

Through: Ms. Indrani Ghosh, Advocate

versus

MANAGING COMMITTEE SRI SATHYA SAI

VIDYA VIHAR AND ANR. Respondents

Through: Mr. Sunil Magon, Adv. for R-1
Mr. Avinash Bhati, Adv. for R-2
Mrs. Avnish Ahlawat, Standing
Counsel with Mr. N.K. Singh and
Ms. Palak Rohmetra, Advocates

AND

+ W.P.(C) 932/2019 and CM 13312/2020

POONAM SHARMA

..... Petitioner

Through: Ms. Indrani Ghosh, Advocate

versus

MANAGING COMMITTEE SRI SATHYA

SAI VIDYA VIHAR AND ANR.

..... Respondents

Through: Mr. Sunil Magon, Adv. for R-1
Ms. Ruchira Gupta and
Ms. Mona Sinha, Advocates
for R-2

AND

+ W.P.(C) 956/2019 and CM 13158/2020

BIBHA JOSHI SHARMA

..... Petitioner

Through: Ms. Indrani Ghosh, Advocate

versus

MANAGING COMMITTEE SRI SATHYA SAI

VIDYA VIHAR AND ANR

..... Respondents

Through: Mr. Sunil Magon, Adv. for R-1
Mr. Gaurav Dhingra, Adv. for R-2

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J.

1. The present petitions have been filed by the petitioners praying *inter alia* for issuance of a writ of mandamus, directing the Respondent/School to pay salaries and other emoluments to them as per the recommendations of the Seventh Central Pay Commission, at par with

their contemporaries in the Government and Government aided schools, invoking provisions of Section 10(1) of Delhi School Education Act and Rules, 1973 (hereinafter referred to as '**the DSEA&R**'). Directions are also sought to the Director of Education, Govt. of NCT of Delhi to take action against the Respondent/School for not implementing its circulars and mandate of Section 10(1) of DSEA&R. Since common questions of law and facts arise in all the above writ petitions, they are being taken up and decided by this common judgement. Managing Committee of Shri Sathya Sai Vidya Vihar/School is being referred to as '**School**' and the Director of Education is being referred to as '**DOE**' hereinafter, for the sake of convenience.

2. The brief facts germane for deciding the present writ petitions, including minor differences are as under:

a. Petitioners are Teachers employed with the School and their respective dates of appointments, etc., are set out hereinunder in a tabular form:

Sl. No.	Writ Petition	Name	Date of Appointment	Subject
1.	W.P.(C) 928/2019	Kuttamparampath Sudha Nair	02.07.2001	TGT (Science)
2.	W.P.(C) 929/2019	Rajeev Kumar Dhingra	12.07.2001	TGT (Phy.Ed.)
3.	W.P.(C) 932/2019	Poonam Sharma	10.07.1997	PGT (Maths)
4.	W.P.(C) 956/2019	Bibha Joshi Sharma	01.08.2003	TGT (English)

- b. Pursuant to the recommendations of 7th CPC, Central Civil Services (Revised Pay) Rules, 2016 were notified and published on 25.07.2016 by Ministry of Finance, Government of India and given effect from 01.01.2016. Government of NCT of Delhi, vide Circular dated 17.10.2017, directed the private unaided recognised schools of Delhi to extend the benefits of the recommendations of 7th CPC as per mandate of Section 10(1) of the DSEA&R to its employees, at par with the Government employees of corresponding status granted benefits under the Notification dated 25.07.2016.
- c. Case set out by the Petitioners is that while other private schools extended the benefits of 7th CPC recommendations to its teachers and other employees, the management of Respondent School did not comply with the directions in the Circular dated 17.10.2017 and continues to pay salaries and allowances as per the recommendations of 6th CPC. Representation dated 29.11.2018 and a reminder thereto elicited no response. Constrained by the inaction of the school, Petitioners made a representation on 29.11.2018 to the DOE, complaining of non-payment of salaries and other dues, etc., under 7th CPC, followed by a reminder, but there was no response. Having left with no option, Petitioners approached this Court and moved the present petitions.

3. Ms. Indrani Ghosh, learned counsel for the Petitioners contended that Petitioners are entitled to the benefits of salaries and other allowances such as Dearness Allowance, Bonus, DA Merger, etc., under

the 7th CPC at par with employees of the corresponding status in schools run/aided by the Government, by virtue of Section 10(1) of the DSEA&R. Provisions of Section 10(1) of the DSEA&R being mandatory, have to be complied with in letter and spirit. Failure to do so makes the School liable for de-recognition under Section 4(1)(a) of the DSEA&R.

4. The components of the benefits claimed in the present petitions have been summarised in the petitions in the following tabulated form :-

S. No.	Components of Dues	Amount
(a)	Arrears of Salary from 01.01.2016 after fixation of pay as per recommendations of the 7 th Pay Commission till date	Calculated as per Rules as applicable to Govt. school employees
(b)	Arrears of Annual Bonus not paid till date	-do-
(c)	Arrears of Dearness Allowance instalments not paid till date	-do-
(d)	Arrears of 50% DA merger	-do-
(e)	Interest @ 18% per annum on the dues till the actual date of payment from the date of the same became payable	-do-

5. It was next contended that the DOE had issued a Circular on 17.10.2017 directing the management of all private unaided recognized schools in Delhi to grant benefits of 7th CPC to their employees in accordance with Section 10(1) of the DSEA&R, after a decision was taken to adopt the CCS (Revised Pay) Rules, 2016. Learned counsel submitted that thereafter, another Circular dated 09.10.2019 was issued

by the DOE, reiterating their stand in view of the mandate of Section 10(1) of the DSEA&R and direction to comply with the order dated 25.08.2017 and Circular dated 17.10.2017, within 15 days, failing which necessary action shall be taken under the various provisions of the DSEA&R, against the defaulting schools.

6. It is contended that the School cannot escape its obligations and duties to pay the revised benefits under 7th CPC and law on this issue is no longer *res integra*. The Supreme Court in the case of Frank Anthony Public School Employees' Assn. vs. Union of India, (1986) 4 SCC 707 held that even an employee of a minority institution is entitled to the benefits under Section 10(1) of the DSEA&R and that would not violate the protection guaranteed under Article 30(1) of the Constitution of India. Subsequently, in the case of T.M.A. Pai Foundation & Ors. vs. State of Karnataka & Ors., 2002 (8) SCC 481, an eleven-Judge Bench of the Supreme Court reiterated the principle and held that there was no reason why regulations or conditions concerning generally the welfare of students and teachers should not be made applicable to minority institutions in order to provide a proper academic atmosphere and that the provisions do not in any manner interfere with the right of administration or management under Article 30(1) of the Constitution.

7. Learned counsel also relied on the judgement in Raj Soni vs. Air Officer Incharge Admn. & Anr., 1990 (3) SCC 261, wherein the Supreme Court held that recognized Private Schools in Delhi, whether aided or otherwise, are governed by the provisions of the DSEA&R and the management of the schools are under a statutory obligation to uniformly apply the provisions to the teachers employed in such schools.

8. *Per contra*, Mr. Sunil Magon, learned counsel appearing for the School, at the outset, raised an objection to the maintainability of the writ petitions by contending that no writ of mandamus can be issued by a Court under Article 226 of the Constitution of India against a private educational institution and the only exception would be if a public law element is involved. In the present case, the disputes are purely in the realm of private law and writ petition is not the remedy. Reliance is placed on the judgement of the Madras High Court in **Writ Appeal No. 1307/2019** in the case of The Correspondent/Arokiamada Matriculation Higher Secondary School vs. T. Sorubarani (deceased) & Ors.

9. Writ petitions are opposed on merits on the ground that there is no statutory provision under the DSEA&R which mandates a private recognised unaided school, like the present one, to pay salaries and allowances to its teachers at par with those working in the Government run or Government aided schools. Provisions of Section 10(1) of the DSEA&R have no applicability to unaided private schools, as a bare perusal would indicate. There is a clear exclusion by the Legislature in Section 10(1) of the DSEA&R of the unaided minority and private schools from its purview although the law makers, while enacting the said provision, were fully conscious of the existence of such schools and yet they were not brought into the ambit of the Section.

10. Learned counsel relies on the judgement of the Supreme Court in Satimbla Sharma vs. St. Paul's Senior Secondary School (2011) 13 SCC 760, where according to him, it was held that teachers of unaided private schools cannot be equated with those working in Government schools. Teachers in Government schools or Government aided schools are paid

out of the Government funds and are therefore under the control of the Government, while the Government has no administrative or financial control over the unaided private schools. This is fortified by the definition of 'Private School' under the DSEA&R, as one, which is not run by the Central Government, Administrator, a local Authority or any other authority designated or sponsored by the Central Government, Administrator or a local Authority. Further, the DSEA&R also defines the term 'Aided school', to mean, a recognized private school receiving aid from the Central Government, Administrator, a local Authority or any other authority designated or sponsored by the Central Government and by virtue of these definitions, the present school is not covered under the provisions of Section 10 (1) of the DSEA&R.

11. Last but not the least, learned counsel strenuously contended that the School is run and maintained in the normal course by a Charitable Trust and its financial position is precarious. There has been no increase in the fee since the academic year 2016-2017. The School fee charged is very nominal as compared to the fee charged in various other private schools. In this context, learned counsel draws the attention of the Court to a tabular representation in the additional affidavit, indicating the fee structure. It is argued that the main source of income is only through Tuition fee as the School does not charge under other Heads such as Development/Examination/Activity Fee. The total number of students is 1158. There are 196 students under the EWS/DG category; about 25 students get fee concession and even those who are required to pay full fee, many a time either do not pay at all or on time and the School is undergoing a financial crisis. Learned counsel further submits that the

situation has worsened on account of the Pandemic Covid-19 and at present, the School is not in a position to bear the burden of disbursing the benefits of 7th CPC, even assuming for the sake of argument that there is a liability to pay.

12. Insofar as the Circulars/Orders by the DOE relied upon by the Petitioners are concerned, it was argued by Mr. Magon that these are merely executive instructions with no statutory force and cannot override the provisions of Section 10 of the DSEA&R, which excludes private recognised unaided schools. Despite there being no mandate to the School to implement the Central Pay Commissions, School has on its own volition implemented 6th CPC with effect from 01.01.2006 and teachers have been paid revised salary and allowances as per 6th CPC recommendations. A detailed chart indicating disbursement of 6th CPC benefits has been shown to the Court during the course of hearing.

13. A short affidavit has been filed on behalf of the DOE, wherein it is stated that the School is an unaided private school, recognized by the DOE under the DSEA&R. After the DOE received notice of the present writ petitions, a status report was sought from the School, followed by several reminder e-mails in October, 2019. The School, vide letter dated 11.10.2019, informed the DOE that the financial position of the School was very weak and it is run by a charitable trust, with only 1158 students, out of which 196 are under the EWS/DG (Category) and some are getting fee concession. On account of the financial constraints, the School is unable to implement and pay the emoluments under 7th CPC. Subsequently the School also informed the DOE that the School is an unaided non-minority educational institution and is not covered under the

provisions of the DSEA&R, whereby schools are required to pay salaries equivalent to those paid to teachers working in Government or Government aided Schools, and that further action shall be taken after the writ petitions pending in this Court are decided.

14. On merits, the stand of the DOE on an affidavit is that the School is bound to comply with the provisions of Section 10(1) of the DSEA&R and pay salaries to its employees at par with those paid to the employees of schools run by the Government or aided by the Government and failure to do so, makes it liable for cancellation of recognition under Section 4 and taking over of the Management under Section 20 of the DSEA&R. It is also stated that financial crisis cannot be a ground to escape the liability arising from the mandate of Section 10(1) of the DSEA&R.

15. I have heard the arguments advanced by learned counsels for the parties and carefully gone through the documents placed on record.

16. The foremost issue that this Court is called upon to decide is regarding maintainability of the present petitions as according to learned counsel for the School, no writ of mandamus can be issued by a Court against a private educational institution like the School herein, unless there is a public law element involved. *Albeit* this objection was not seriously pressed and was only argued subtly, however, this Court may nonetheless deal with the same.

17. Present writ petitions have been filed seeking a writ of mandamus to the School to pay to the Petitioners revised salaries and other emoluments under 7th CPC, and provisions of Section 10(1) of the DSEA&R have been invoked, in support of the claims. A direction is also sought to the DOE to direct the School to perform its statutory obligation

and in the event of default to take action in accordance with the other provisions of the DSEA&R. Therefore, the relief sought, in essence, is a direction to the School and the DOE to implement a statutory provision and a writ of mandamus would certainly lie to enforce a statutory duty. Reliance placed by the School on the judgment of the Madras High Court in The Correspondent/Arokiamada (supra) can be of no avail to the School as this Court and several other High Courts have entertained writ petitions and issued writs of mandamus to enforce the statutory mandate of Section 10(1) of the DSEA&R and directed payment of salaries to the private recognized schools at par with those paid to the employees of corresponding status in the Government run and aided schools, as would be referred to in the later part of the judgment. In fact, a similar issue arose before the Bombay High Court in Anil vs. Maharashtra Academy of Engineering & Education Research, Pune, (2017) SCC OnLine Bom 324 where relying on the judgment of the Madras High Court in the case of The Correspondent/Arokiamada (supra), one of the contentions of the School was that the writ petition was not maintainable. The Bombay High Court rejected the contention and held as follows:-

“23. Relying on the judgments in the cases of Mrs. Satimba Sharma (supra), The Correspondents/Principal Arokaimada Matriculation Higher Secondary School (supra) and K. Krishnamacharyulu v. Sri. Venkateswara Hindi College of Engineering (1997) 3 SCC 571, the learned counsel for the respondents submit that the writ petition are not maintainable. We are not inclined to accept this contention for the simple reason that this issue has been dealt with by the Nagpur Bench of this Court in the case of Mahadeo S/o Pandurang More (supra). The Court considered the case of Mrs. Satimbla Sharma (supra) and in para 28 of the said judgment clearly

observed that where a statutory provision casts a duty on a private aided school to pay similar salary and allowances to its teachers, as are being paid to the teachers of government aided schools, then a writ of mandamus could be issued to enforce such statutory duty. It is further observed that the writ jurisdiction of the High Court under Article 226 of the Constitution is wide enough to issue a writ for payment of pay on par with Government employees.

18. In view of the above, this contention of the School is rejected and it is held that the writ petitions are maintainable before this Court.

19. In order to decide the vexed question arising before this Court as to whether the provisions of Section 10 (1) of the DSEA&R apply to private recognized unaided schools, provisions of Section 10 need to be examined and the same is extracted hereunder for ready reference:-

“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.”

20. The issue of applicability of Section 10 (1) and other provisions of Chapter IV of the DSEA&R to unaided minority schools came up for consideration before the Supreme Court in Frank Anthony (supra) and the Supreme Court set aside the pre-existing Section 12, which had excluded the application of Section 10(1) and other provisions to the unaided minority schools. The Supreme Court also considered whether applying Section 10(1) would have the impact of eroding the minority character of the schools which entitles them to a Constitutional protection under Article 30(1) and held that it did not. The Supreme Court had observed that excellence of every school, aided or unaided, would depend upon the quality of its teachers and therefore, provisions like Section 10(1) mandating payment of salary and allowances cannot be characterized as unreasonable even in respect unaided minority institutions.

21. The judgment was followed in several cases and was also relied upon by the eleven-Judge Bench of the Supreme Court in T.M.A. Pai (supra). Relevant paras of the judgment in Frank Anthony (supra) are as follows:-

“20. Thus, Sections 8(1), 8(3), 8(4) and 8(5) do not encroach upon any right of minorities to administer their educational institutions. Section 8(2), however, must, in view of the authorities, be held to interfere with such right and, therefore, inapplicable to minority institutions. Section 9 is again innocuous since Section 14 which applies to unaided minority schools is virtually on the same lines as Section 9. We have already considered Section 11 while dealing with Section 8(3). We must, therefore, hold that Section 12 which makes the

provisions of Chapter IV inapplicable to unaided minority schools is discriminatory not only because it makes Section 10 inapplicable to minority institutions, but also because it makes sections 8(1), 8(3), 8(4), 8(5), 9 and 11 inapplicable to unaided minority institutions. That the Parliament did not understand Sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article 30(1) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article 30(1) is the price which the aided minority institutions have to pay to obtain aid from the government.”

21. The result of our discussion is that Section 12 of the Delhi School Education Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void except to the extent that it makes Section 8(2) inapplicable to unaided minority institutions. We, therefore, grant a declaration to that effect and direct the Union of India and the Delhi Administration and its officers, to enforce the provisions of Chapter IV [except Section 8(2)] in the manner provided in the chapter in the case of the Frank Anthony Public School. The management of the school is directed not to give effect to the orders of suspension passed against the members of the staff.

23. We must refer to the submissions of Mr Frank Anthony regarding the excellence of the institution and the fear that the institution may have to close down if they have to pay higher scales of salary and allowances to the members of the staff. As we said earlier the excellence of the institution is largely dependent on the excellence of the teachers and it is no answer to the demand of the teachers for higher salaries to say that in view of the high reputation enjoyed by the institution for its excellence, it is unnecessary to seek to apply provisions like Section 10 of the Delhi School Education Act to the Frank Anthony Public School. On the other hand, we should think that the very contribution made by the teachers to earn for the institution the high reputation that it enjoys should spur the

management to adopt at least the same scales of pay as the other institutions to which Section 10 applies. Regarding the fear expressed by Shri Frank Anthony that the institution may have to close down we can only hope that the management will do nothing to the nose to spite the face, merely to “put the teachers in their proper place”. The fear expressed by the management here has the same ring as the fear expressed invariably by the management of every industry that disastrous results would follow which may even lead to the closing down of the industry if wage scales are revised.”

22. Relevant paras of the judgment in T.M.A. Pai (supra) are as follows:-

*“124. In Lily Kurian v. Sr. Lewina [(1979) 2 SCC 124 : (1979) 1 SCR 820] this Court struck down the power of the Vice-Chancellor to veto the decision of the management to impose a penalty on a teacher. It was held that the power of the Vice-Chancellor, while hearing an appeal against the imposition of the penalty, was uncanalized and unguided. In Christian Medical College Hospital Employees' Union v. Christian Medical College Vellore Assn. (1987) 4 SCC 691 this Court upheld the application of industrial law to minority colleges, and it was held that providing a remedy against unfair dismissals would not infringe Article 30. In Gandhi Faiz-e-am College v. University of Agra (1975) 2 SCC 283 a law which sought to regulate the working of minority institutions by providing that a broad-based management committee could be reconstituted by including therein the Principal and the seniormost teacher, was valid and not violative of the right under Article 30(1) of the Constitution. In All Saints High School v. Govt. of A.P. (1980) 2 SCC 478 a regulation providing that no teacher would be dismissed, removed or reduced in rank, or terminated otherwise except with the prior approval of the competent authority, was held to be invalid, as it sought to confer an unqualified power upon the competent authority. **In Frank Anthony Public School Employees'***

Assn. v. Union of India (1986) 4 SCC 707 the regulation providing for prior approval for dismissal was held to be invalid, while the provision for an appeal against the order of dismissal by an employee to a tribunal was upheld. The regulation requiring prior approval before suspending an employee was held to be valid, but the provision, which exempted unaided minority schools from the regulation that equated the pay and other benefits of employees of recognized schools with those in schools run by the authority, was held to be invalid and violative of the equality clause. It was held by this Court that the regulations regarding pay and allowances for teachers and staff would not violate Article 30.”

(emphasis supplied)

23. The issue again came up before the Supreme Court in Raj Soni vs. Air Officer Incharge (Administration), 1990 3 SCC 261 where the Supreme Court reiterated and re-affirmed the inflexible nature of the liability that was binding on a recognized school under the provisions of the DSEA&R and significant would it be to note that the Supreme Court categorically held that recognized private schools in Delhi, whether aided or otherwise, are governed by the provisions of DSEA&R. Relevant para of the judgment is as under:-

“11. The recognized private schools in Delhi whether aided or otherwise are governed by the provisions of the Act and the Rules. The respondent-management is under a statutory obligation to uniformly apply the provisions of the Act and the Rules to the teachers employed in the school. When an authority is required to act in a particular manner under a statute it has no option but to follow the statute. The authority cannot defy the statute on the pretext that it is neither a State nor an “authority” under Article 12 of the Constitution of India.”

24. In P.M. Lalitha Lekha v. Lt. Governor & Ors. in **W.P. (C) No. 5435/2008** decided on 02.02.2011 although the question involved was counting of service of the Petitioner therein for computing her pension and in that context was different on facts, but the point of law was the same as the one arising in the present petition. Co-ordinate Bench of this Court examined the provisions of Section 10 (1) of the DSEA&R and observed that the first proviso to Section 10 (1) clearly obliges the DOE to direct the management of all recognized private schools to bring all benefits, including *inter-alia* pensionary benefits, to the same level as that of the employees of corresponding status of the schools run by the Director of Education. The second proviso enables the DOE to withdraw the recognition of the school under Section 4 of the DSEA&R in case the management fails to comply with the directions and serves a salutary purpose and empowers the DOE to issue directions aimed at fulfilling the object of Section 10 (1) of the DSEA&R. It was also held that the mandate of Section 10 (1) is unambiguous, regardless of whether the school receives grant-in-aid or not. It was also held that it must be kept in mind that the Delhi School Education Act contemplates unaided private schools also, as they are also granted recognition and therefore the mandate of Section 10 (1) would apply to them with full rigour. Relevant paras of the judgment are as under:-

“11. The first proviso to Section 10 of the Delhi School Education Act, 1973 clearly obliges the Director of Education to direct the management of all recognized private schools to rectify any deficiency and to bring all benefits, including, inter alia, pensionary benefits up to the same level as those of employees of corresponding status of the schools run by the Director of Education. The second proviso further provides that

in case the management of the school fails to comply with such directions, recognition of the school can be withdrawn under the powers given in S.4 of the Delhi School Education Act, 1973. This serves a salutary purpose and further empowers the Director of Education to issue appropriate directions aimed at fulfilling the object of Section 10 (1) of the Act.

12. The school has been given certain privileges, including recognition, on condition, inter alia, that it complies with Section 10 (1). Due to the non-compliance of the conditions by the respondent school the petitioner cannot be made to suffer. If the respondent school does not come forward to honor its employees' entitlement in this behalf, then, steps need to be taken by the appropriate authority to ensure compliance.

*13. The payment of pension for the period before the grant-in-aid came into the picture has to be rendered by the school, but post such grant, the liability shifts to the respondent. **This is because the mandate of Section 10 (1) is unambiguous. Regardless of whether it receives grant-in-aid or not.** So long as it is a recognized private school, pension and other benefits of its employees must be the same as those admissible to employees of the Authority's schools. Under the first proviso, it is the respondent's duty to ensure that such payment is made. Under the Second proviso the respondent can take action if those directions are not followed. The respondents in no circumstance can be absolved from their duty.*

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15. In this context, it must be kept in mind that the Delhi School Education Act contemplates unaided private schools also. Even such schools are granted recognition. The mandate of Section 10(1) applies with full rigour to them also."

(emphasis supplied)

25. Recently, a Division Bench of this Court in Dhanwant Kaur Butalia & Ors. v. Guru Nank Public School & Ors. in **LPA 499/2013** decided on 14.01.2016 reiterated and re-enforced that Section 10 (1) with its consequential resultant mandate that scales of pay, allowances, medical facilities, gratuity, etc., paid to the Government schools should be paid to employees of corresponding status in private recognized schools, would apply to all unaided schools. Section 10 (1) is a statutory purity and also a minimum standard which all recognized schools have to adhere to.

26. In the appeal before the Division Bench, the Appellant was aggrieved by an order of the learned Single Judge whereby her claim for increase of salary, consequent to implementation of 6th CPC recommendation, was rejected. The Appellant invoked provisions of Section 10 (1) of DSEA&R and also relied on earlier judgments of this Court wherein it was consistently ruled that unaided schools have an obligation to ensure that emoluments of teachers and other employees are at par with those in the schools established and maintained by the appropriate Government. Judgments of this Court in Gurvinder Singh Saini vs. Guru Harkishan Public School and Ors. in **W.P. (C) 12372/2009** decided on 02.09.2011, Deepika Jain vs. Rukmini Devi Public School & Ors. in **W.P.(C) 237/2013** decided on 23.09.2013 and the judgment of Division Bench in Guru Harkishan Public School & Anr. vs. Gurvinder Singh Saini & Anr. in **LPA 58/2012** decided on 05.09.2012, were cited by the Appellant and taken note of by the Division Bench.

27. As the issue before the Division Bench concerned benefits under 6th CPC, reliance was placed on the CCS (Revised Pay) Rules, 2008 and Office Memorandum dated 30.08.2008 referring to the said Rules. Based

on this, a Circular was issued by the Competent Authority under the DOE on 15.10.2008, directing the managements of all private recognized (aided as well as unaided) schools to implement 6th CPC recommendations. After a conjoint reading of the circulars and the Pay Rules, the Division Bench held as follows:-

*“6. The Court also notices that the pre-existing Section 12 which had excluded the application of Section 10 and other provisions of the Chapter, to unaided minority schools was set aside by the Supreme Court in **Frank Anthony School Employees Association vs. Union of India & Ors.** AIR 1987 SC 311. The Supreme Court expressly considered the impact of Section 10 and whether it had the effect of eroding the minority character of schools entitled to protection under Article 30 and concluded that it did not. The said judgment has been constantly followed and it was not overruled but was approved in **TMA Pai Foundation’s** case (supra). Section 10 with its consequential resultant mandate is that scales of pay, allowances, medical facilities, gratuity, provident fund “and other prescribed benefits” which employees of “corresponding status” in schools of the appropriate government are to be granted to employees of all unaided schools.*

7. This ipso facto ought to clinch the case in favour of the present appellant. Section 10 is a statutory purity and also a minimum standard which all recognized schools have to adhere to.

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“10. The said office memorandum of 30.08.2008 also referred to the Central Civil Service Revised Pay Rules, 2008. The effect of all these office memoranda (dated 11.09.2008, 22.09.2008 and 15.10.2008) is that the managements of all private recognized schools aided as well as unaided had to implement the 6PC Recommendations, in the manner stipulated by Section

10 of Delhi Education Act. Circular dated 15.10.2008 was categorical in this regard. It reads as under:

“Section 10 (1) of Delhi School Education Act 1973 provides 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 school run by the appropriate authority.”

Therefore, the Management of all private recognized, (Aided as well as unaided) schools are directed to implement the Sixth Pay Commission recommendations – fixation of pay and payment of arrears in accordance with circular no.30-3(17)/Cood/Cir/2008 dated 22.09.2008 vide which it has been implemented in r/o employees of Government Schools.

This issue with prior approval of competent Authority.”

11. A co-joint reading of all circulars would immediately reveal that the 6PC recommendations were accepted and the Central Government formulated the revised pay rules with effect from 01.01.2006. The rules were published in 2008. Nevertheless, the entitlement following from it accrued to all with effect from 01.01.2006. The only exception was that certain types of allowances i.e. HRA, children's education allowance, special compensatory allowance etc. were to be paid prospectively with effect from 01.09.2008 (refer para 3 of OM dated 30.08.2008). In all other respects, the pay parity mandated for government of NCT teachers was to apply to teachers and staff members of unaided schools – minority and non-minority schools.

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13. In the present case, Section 10 remains on the statute book; it was declared to be applicable to all unaided schools including minority schools, from 1986 onwards i.e. with the declaration of the law in **Frank Anthony School Employees Association's** case (supra). There is no dispute that the 6PC recommendations were to be implemented from the date the Government of NCT implemented it. Such being the case, the respondent school in the present case could not have claimed ignorance of application of Section 10 and stated that it was obliged to pay arrears or implement the 6PC recommendations with effect from the date later than that applicable in the case of Government of NCT teachers and teaching staff in its schools.

14. As a consequence and in the light of the previous order of this court in **Gurvinder Singh Saini's** case (supra) and **Uma Walia's** case (supra) the impugned order and judgment of learned Single Judge is hereby set aside. The respondent is directed to disburse all the arrears of salary and allowances payable pursuant to 6PC recommendations – to the appellant except those expressly denied by virtue of the Central Government's Office Memorandum dated 30.08.2008, within six weeks from today."

28. Contention of learned counsel for the School that Section 10(1) does not specifically include unaided private schools may seem attractive at the first blush, if one was to superficially look at the provisions of the Section, where the words used are 'recognized private school'. However, the contention cannot be accepted in view of the various judicial pronouncements where the provision of Section 10(1) has been interpreted to include both aided and unaided schools. The Division Bench in Dhanwant Kaur (supra) has clearly held that the mandate of Section 10(1) would apply to all unaided schools as the minimum

standard that the provision ensures must be adhered to by all recognized schools.

29. In Dev Dutt Sharma vs. Managing Society National Public School & Ors. in **W.P. (C) 11563/2009** decided on 02.07.2010, a Co-ordinate Bench of this Court pronounced that the mandate of Section 10 (1) is unambiguous, regardless of whether the institution receives grant-in-aid or not. Since the Act itself contemplates unaided private schools for recognition, mandate will apply with full rigour to them. The Supreme Court in Frank Anthony (supra) held that impact of Section 10 (1) would not have the effect of eroding the minority character of the Minority Institutions, who are entitled to protection under Article 30(1) of the Constitution of India.

30. Additionally, it may be noted that this is also the understanding of the DOE which is implicit in the various Circulars issued by them from time to time in this regard. Vide order dated 19.08.2016, DOE, in exercise of powers conferred under Sections 17(3), 24(3) and 18 of the Delhi School Education Act, 1973 read with Rules 50, 177 and 180 of the Delhi School Education Rules, 1973 adopted the CCS (Revised Pay) Rules, 2016, under which benefits of 7th Pay Commission are paid to the Government employees. Directions were accordingly issued by the DOE, vide Circular dated 17.10.2017 to all the unaided private recognized schools to extend the benefits of 7th CPC to its employees in accordance with Section 10 (1) at par with the Government employees. By another order dated 09.10.2019, the DOE reiterated its directions to the unaided schools to comply with the mandate of Section 10 (1), failing which necessary action shall be taken as per provisions of DSEA&R against the

defaulting Schools. Relevant paras of the order dated 17.10.2017 are as under:-

*“In continuation of this Directorate's Order No.DE.15(318)/PSB/2016/18117 dated 25/08/2017 and In exercise of the powers conferred under action 17(3)and section 24(3), of the Delhi School Education Act, 1973 read with sub sections 3, 4 and 5 of Section 18 of the Delhi School Education Act, 1973 and with rules 50, 177 and 180 of the Delhi School Education Rules, 1973 and in continuation of the previous ordersNo.DE. 15/Act/Duggal.Com/203/99/23039-23988 dated 15.12.1999, F.DE 15/Act/2K/243/KKK/883-1982 dated 10.02.2005, E.15/Act/2006/738-798 dated 02.02.2006, relevant paras of F.DE/15 (56)/Act/2009/778 dated 11.02.2009, F.DE-15/ACT-I/WPC-4109/13/6750 dated 19.02.2016, F.DE-15/ACT-I/WPC-4109/PART/13/7905-7913 dated 16.04.2016 & F.DE/PSB/2017/16604 dated 03/07/2017, I, Saumya Gupta, Director of Education, hereby issue following directions to all the Unaided Private Recognized Schools in the National Capital Territory of Delhi for the implementation of **7th Central Pay Commission's Recommendations** under Central Civil Services (Revised Pay) Rules, 2016 with effect from 01.01.2016.*

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2. Period of Implementation of 7th CPC

The benefits of 7th Central Pay Commission Recommendations have been implemented by the Govt. of India, Department of Expenditure, Implementation Cell, Ministry of Finance in a staggered manner. As per the notification dated 25/07/2016 issued by Govt. of India, Ministry of Finance, basic pay of the Govt. employee has been increased for the period 01/01/2016 to 30/06/2017 and increased allowances have been allowed to the Govt. employees w.e.f. 01/07/2017. Thus, in accordance with sub-section (1) of Section 10 of Delhi School Education Act, 1973, the benefits of the recommendations of 7th CPC to

the employees of Private Unaided Recognized Schools of Delhi will also be extended in a similar manner. ”

31. Relevant paras of order dated 09.10.2019 are extracted as under:-

“Whereas, in accordance with Section 10 (1) of Delhi School Education Act 1973, 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 school run by the appropriate authority.

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And whereas, in exercise of the powers conferred under clause (xviii) of rule 50 of the Delhi School Education Rules, 1973, vide Competent Authority order No. DE. 15 (318)/PDB/2016/18117, dated 25.08.2017, the managing committees of all Private Unaided Recognised Schools have already been directed to implement Central Civil Services (Revised Pay) Rule, 2016 in respect of the regular employees of the corresponding status with effect from 01.01.2016 (for the purpose of pay fixation and arrears). Further, guidelines/detailed instructions for implementation of 7th CPC recommendations in Private Unaided Recognized Schools of Delhi has also been issued vide DoE order dated 17.10.2017.

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Now, therefore, the managing committees of all Private Unaided Schools are hereby once again directed to comply with the directions containing in order issued vide letter No. DE. 15 (318)/PSB/2016/18117 dated 25.08.2017, within 15 days, in order to implement Central Civil Services (Revised Pay) Rules, 2016 w.e.f. 01.01.2016 (for the purpose of pay fixation and arrears) in respect of the regular employees of the corresponding status in their schools as adopted by DoE for employees of government schools, failing which necessary

action shall be taken as per the provisions of DSEAR, 1973, against the defaulting schools.”

32. In the short affidavit filed by the DOE before this Court, the same stand has been reiterated and relevant paras from the affidavit are as under:-

“7. That it is pertinent to mention here that vide order 25.08.2017, the competent authority of the Answering Respondent in exercise of the powers conferred under clause 9 (xviii) of Rule 50 DSEAR 1973, had directed the managing committees of all the private unaided recognized schools were directed to implement Central Civil Services (Revised Pay) Rule, 2016 in respect of the regular employees of the corresponding status with effect from 01.01.2016 (for the purpose of pay fixation and arrears). It is further submitted that guidelines/detailed instructions for the implementation of 7th CPC recommendations in private unaided recognized schools of Delhi were also issued by the Answering Respondent vide order dated 17.10.2017.

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9. That in view of the aforementioned orders dated 25.08.2017 and 09.10.2019, the Respondent School's reply dated 11.10.2019 was not found satisfactory by the Answering Respondent, therefore, the Answering Respondent issued another email dated 14.10.2019 to the Respondent No. 1 School directing it to comply with the provisions of DSEAR 1973 and submit the report of compliance within one week. Since no compliance report was received from the Respondent No. 1 School, the Answering Respondent sent reminder emails dated 17.10.2019, 23.10.2019, and 28.01.2020.

A copy of the Answering Respondent's email dated 14.10.2019 by the Answering Respondent to the Respondent No. 1 School is being annexed herewith and marked as ANNEXURE R2/5.

Copies of the reminder emails dated 17.10.2019, 23.10.2019, and 28.01.2020 to the Respondent No. 1 School are being annexed herewith and marked as ANNEXURE R2/6 (Colly).

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14. It is submitted that whenever the managing committee or manager of any school neglects to perform any of the duties imposed on it by or under DSEAR, the Answering Respondent is authorized to either withdraw the recognition of the School or if it is expedient in the interests of school education, to take over the management of such school under Section 20 DSEAR. It is submitted that Section 10 of DSEAR provides for salaries and allowances to be paid to the employees and the consequences if the same are not being paid by the School. It is pertinent to mention here that if the teachers are not being paid salaries in terms of Section 10 DSEAR, the recognition of the School granted under Section 4 of DSEAR, can be withdrawn.

15. That as stated hereinabove, the Respondent School is liable to pay salary as per 7th CPC w.e.f 01.01.2016 and as per Section 10 DSEAR and if the same is not complied the Answering Respondent will take action against the Respondent School as per due process of law. ”

33. The Court notes that the DOE has consistently taken a stand that the private recognized unaided schools are bound to comply with provisions of Section 10 (1) and this is discernible from Circular dated 15.10.2008 issued by the DOE after the CCS (Revised Pay) Rules, 2008 were notified, pursuant to 6th CPC. The Circular was taken note of by the Division Bench in Dhanwant Kaur (supra) and is extracted in the earlier part of the judgement. This obviates any doubt that provisions of Section 10(1) of the DSEA&R shall apply to the Respondent/School and it is under a statutory obligation to pay the revised salaries and emoluments

under 7th CPC to the Petitioners, in accordance with the various DOE circulars and orders referred and alluded to above.

34. In any event, it is not open to the School to even argue that the provisions of Section 10 (1) of the DSEA&R would not apply to the Petitioners as it was clearly mentioned in the appointment letters that Terms and Conditions of appointment would be governed by the DSEA&R. While incorporating this stipulation in Clause 3 of the appointment letters, the School did not carve out any exception or caveat that provisions of Section 10 (1) will not apply to the teachers. Clause 3 of the respective appointment letters reads as under:-

“The terms and conditions of appointment are to be governed by the Delhi School Education Act & Rules, 1973.”

35. The next contention of the School, without prejudice to the earlier contention, was that the School is run by a Charitable Trust and its financial condition is weak with total number of students being less and many of them covered under the EWS/DG category. School is thus unable to bear the burden of disbursing the salaries and the emoluments as per the CCS (Revised Pay) Rules, 2016 in respect of the Government employees. Courts have repeatedly held that paucity of funds or financial crunch of an employer cannot be an answer to non-compliance of a statutory mandate. In the context of payment of minimum wages, the Supreme Court in Unichovi vs. State of Kerala, **AIR 1962 SC 12** and Hydro (Engineers) Private Ltd vs. Workmen **1969 (1) SCR 156** held that hardship to an employer to carry on its activity, on account of payment of minimum wages, is an irrelevant consideration for determination of

minimum wages. The State assumes that every employer must be in a position to pay minimum wages before he resorts to employment. In Air Freight Ltd. vs. State of Karnataka, **1996 (6) SCC 547**, this solemn principle was reiterated.

36. In the context of Section 10 (1) of DSEA&R, this Court had rejected the argument of paucity of funds as an irrelevant consideration in the case of Samaj Shiksha Samiti vs. Delhi State Saraswati Shishu Bal Mandir Karamchari Kalyan **2002 (97) DLT 802**. In this context, I may quote a few passages from the judgment in Veena Sharma (Mrs.) & Ors. vs. The Manager, No.1 Air Force School Palam & Ors. **2005 VII AD (Delhi) 517** as follows:-

“18. Two things clearly emerge, from the above position. The respondent school is under an obligation to comply with the provisions of Section 10. This obligation is not relieved in any manner; rather, Section 4(1) reinforces this conclusion. Further, the Director and other authorities under the Act have no power to exempt any recognized school from its liability to comply with Section 10. The reliance of the school on the implied approval by the Central Government, is in my considered opinion of no consequence. There is no dispute about the fact that the Directorate itself has been insisting upon payment of salary and allowances in accordance with Section 10. Indeed that was the condition of recognition itself. The second issue is that financial hardship is also no consideration or ground to relieve an employer of his statutory obligation to pay what society has decreed as the minimum salary of teachers and staff, through the provisions of Section 10 of the Act.

19. The submission of learned counsel for the school that if the relief is granted and the pay scales have to be released in favour of the petitioners, a situation might arise leading to the close of the school is somewhat similar to the apprehensions

voiced by the Management in Frank Anthony case (supra). The Supreme Court dealt with arguments in the following terms:-

“We must refer to the submissions of Mr. Frank Anthony regarding the excellence of the institution and the fear that the institution may have to close down if they have to pay higher scales of salary and allowances to the members of the staff. As we said earlier the excellence of the institution is largely dependent on the excellence of the teachers and it is no answer to the demand of the teachers for higher salaries to say that in view of the high reputation enjoyed by the institution for its excellence, it is unnecessary to seek to apply provisions like Section 10 of the Delhi School Education Act to the Frank Anthony Public School. On the other hand, we should think that the very contribution made by the teachers to earn for the institution the high reputation that it enjoys should spur the management to adopt at least the same scales of pay as the other institutions to which Section 10 applies. Regarding the fear expressed by Shri Frank Anthony that the institution may have to close down we can only hope tht the management will do nothing to the nose to spite the face, merely to put the teachers in their proper place. The fear expressed by the management here has the same right as the fear expressed invariably by the management of every industry that disastrous results would follow which may even lead to the closing down of the industry if wage scales are revised.

20. The submission of paucity of funds, has to be, therefore, rejected. The subjective or individual hardship of a management, that too sponsored by no less an Organization of the stature of Indian Air force, which even went to the extent of seeking to deny liability on the ground that the school caters to the children of JCOs (Junior Commissioned Officers) impliedly perhaps suggesting that the children of such employees can be

taught without compliance with minimum standards imposed by law, cannot be countenanced.”

37. In this regard, I am also fortified in my view by a judgment of a Co-ordinate Bench in Deepika Jain vs. Rukmini Devi Public School & Ors. **W.P. (C) 237/2013 decided on 23.09.2013**, where implementation of 6th CPC benefits was sought by the Petitioner and the Court held as follows:-

*“3. I have held in many cases, including the case of **Meenu Thakur Vs. Somer Ville School & Ors.** W.P.(C) 8748/2010 decided on 13.2.2013 that paucity of funds is not a ground to not pay amounts as per the 6th Pay Commission Report and the order of the Director of Education dated 11.2.2009. A Division Bench of this Court in LPA 286/2010 titled as **Rukmani Devi Jaipuria Public School Vs. Sadhna Payal & Ors.** decided on 11.5.2012 has also held that paucity of funds is not a ground not to make payments as per the 6th Pay Commission Report.”*

38. In view of the above, this Court cannot accept the plea of paucity of funds and financial crisis raised by the School.

39. Accordingly, the writ petitions deserve to be allowed. The School is directed to re-fix the salaries and other emoluments of the Petitioners applying the revised pay matrix under 7th CPC, in accordance with the order of the DOE dated 19.08.2016 and the Circular dated 17.10.2017, whereby the CCS (Revised Pay) Rules, 2016 were adopted. Petitioners shall be entitled to arrears with effect from 01.01.2016, the date from which the recommendations of 7th Pay Commission have been given effect. The School shall carry out the exercise of refixing the revised

salaries and emoluments of the Petitioners within a period of four weeks from today and the payments shall be made accordingly hereinafter.

40. Ordinarily, this Court would have fixed a short time-frame for release of arrears, however, keeping into account the fact that the School is run by a Charitable Trust and the unprecedented effect of the Pandemic Covid-19, the School is given a time-frame of six months to clear the arrears. For the same reason, this Court is not awarding interest on payment of arrears.

41. The writ petitions are allowed and disposed of, along with the pending applications.

MAY 6, 2021
rd/yo

JYOTI SINGH, J

