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

% *Date of decision: 22nd September, 2021*

\+ W.P.(C) 1335/2019, CM Nos. 6041/2019, 10806/2020, 12659/2020, 17092/2020, 17189/2020, 30909/2020 & 24744/2021, 12658/2020, 17188/2020 & 19959/2020

AMRITA PRITAM & ORS

…..... Petitioners

Through: Mr.Rakesh Kumar, Adv.

versus

S S MOTA SINGH JUNIOR MODEL SCHOOL & ORS

..... Respondents

Through: Mr.Vedanta Varma, Ms.Meghna Mishra, Mr.Ankit Rajgarhia, Mr.Tarun Sharma and Ms.Aishwarya Chaturvedi, Advs. for R-1 & 2.

Mr.V. Balaji, Panel Adv. for R-3/DoE with Ms.Neha Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CM No. 19959/2020 (under Section 151 CPC on behalf of petitioners for filing additional documents)

For the reasons stated in the application, the same is allowed. The additional documents are taken on record. Application is disposed of.

CM Nos. 12658/2020 & 17188/2020 (under Order 1 Rule 10 CPC r/w Section 151 CPC for impleament)

These are applications filed by applicants for impleadment as petitioners.

In view of the order dated January 12, 2021 in similar applications these applications are dismissed with liberty to the applicants to file substantive petitions.

W.P.(C) 1335/2019

1. This petition has been filed with the following prayers:

> *"It is therefore prayed in the interest of justice that the Hon'ble Court may kindly be pleased to issue appropriate, writs in favour of the petitioners thereby;*
>
> *i. directing the Respondent No.1 and 2 to pay / implement 7th pay commission, pay scale and all consequential benefits thereof monetary as well as non monetary such as pay revision, re-fixation of higher pay scale, assured career progression (ACP), all applicable allowances thereof, all arrears w.e.f. 01.01.2016 alongwith interest thereupon from 01.01.2016 @18% p.a. w.e.f. 01.01.2016 till the date of actual payment to the petitioners;*
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> *ii. Direct the Respondent No.3 to ensure full implementation of 7th Pay Commission by the Respondent No.1 and 2 qua the petitioners and grant them pay scale and all consequential benefits thereof monetary as well as non monetary such as pay revision, re-fixation of pay scale, assured career progression (ACP), all applicable allowances thereof, arrears w.e.f. 01.01.2016 alongwith interest thereupon @18% p.a. w.e.f. 01.01.2016 till the date of actual payment to the petitioners. Direct the respondents to strictly comply with applicable provision of DSE Act and Rules and its own circulars/notifications and office orders issued with*

regard to compliance of Pay Commission recommendations;

iii. Costs and litigation expenses throughout may also kindly be allowed and the respondents may kindly be directed to pay the same to the petitioner;

iv. Any other and further order (s) and direction(s) as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case be passed in favour of the petitioner and against the respondent."

2. This writ petition was listed on August 25, 2021 when I heard the learned counsel for the parties and directed the listing of the same for orders on September 08, 2021.

3. On September 08, 2021, this Court passed the following order:-

"This petition was heard by this Court on August 25, 2021 and directed listing of the same for orders, today.
On September 06, 2021, Mr. Vedanta Varma, learned counsel for respondent Nos. 1 and 2, had mentioned the matter at 10:30 am stating that the respondent Nos. 1 and 2 have filed a separate writ petition which had come up before a co-ordinate Bench of this Court wherein the challenge is to the order passed by the Directorate of Education directing the respondent Nos. 1 and 2 to pay the benefits of 7th CPC to its employees. Mr.Varma stated status quo order has been passed by the co-ordinate Bench with regard to the enhancement of fee. It also directed no coercive action shall be taken by the respondent Nos. 1 and 2 – School.

In view of the mentioning, I directed him to place on record the order passed by the co-ordinate Bench of this Court. The same has been filed. The Registry was also directed to list the matter under the heading 'direction' and not 'for orders'.

In view of the above, the order has not been pronounced.

Mr.Varma is directed to file on record the copy of the petition, filed by the respondent Nos. 1 and 2 before the co-ordinate Bench of this Court, within one week from today with a copy to Mr.Rakesh Kumar.

Court notice shall be issued to the Directorate of Education and its counsel returnable on the date fixed

Accordingly, list the writ petition on September 16, 2021."

4. The above makes it clear that Mr. Vedanta Varma, learned counsel appearing for respondent Nos.1 and 2 had, on September 6, 2021 mentioned the matter at 10:30 am stating that the respondent Nos.1 and 2 have filed a separate writ petition which had come up before a Co-ordinate Bench of this Court wherein the challenge is to the order passed by the Directorate of Education directing the respondent Nos.1 and 2 to pay the benefits of the Seventh Central Pay Commission ('7th CPC', for short) to its employees. Mr. Varma had also stated that *status quo* order has been passed by the Co-ordinate Bench with regard to the enhancement of fee. It was also directed that no coercive action shall be taken. In the said order, I had directed Mr. Varma to place on record the writ petition filed by the respondent Nos.1 and 2.

5. The respondent Nos. 1 and 2 has filed on record the writ petition being W.P.(C) 9586/2021. The prayers in the writ petition are the following:-

"In the light of the aforesaid, the Petitioner pray that this Hon'ble Court may kindly be pleased to:

a. Set aside the Impugned Order dated 23.01.2019 passed by Ld. Deputy Director of the Respondent wherein the

Proposal Submitted by the Petitioner School for Enhancement of Fee for the Academic Session 2017-2018 was rejected;

b. Set aside the order dated 09.10.2019 passed by the Respondent DoE through Letter No. F.DE.15/(318)/PSB/2019/11925-30 wherein the DoE had directed Private Unaided Recognized Schools of Delhi to implement Central Civil Services (Revised Pay) Rules, 2016 w.e.f. 01.01.2016 (for the purpose of pay fixation and arrears as per 7th CPC) within 15 days from the receipt of the said order;

c. Allow the present Petition and issue a Writ, Order or direction in the nature of Mandamus or such other writ directing Respondent to accept and allow the proposal of the Petitioner for Enhancement of Fee for the Academic Session 2017-2018, with all consequential effects;

d. Issue an appropriate Writ, Order or direction in the nature of Mandamus or such other writ permitting the Petitioner to increase its tuition fee to meet the standard cost of establishment;

e. issue any other appropriate writ, order or directions as the nature and circumstances of the present case may require."

6. The respondent Nos.1 and 2 has in W.P.(C) 9586/2021 impugned two orders being January 23, 2019 and October 09, 2019. The order dated January 23, 2019 is primarily an order passed by the Directorate of Education whereby the proposal of the respondent Nos. 1 and 2 School for enhancement of fee for the session 2017-18 has been rejected by the Directorate of Education.

7. Insofar as order dated October 09, 2019 is concerned, the same has been passed by the Directorate of Education with regard to CCS (Revised Pay) Rules, 2016 calling upon all private unaided schools to comply with the directions contained

in order dated August 25, 2017 for implementation of CCS (Revised Pay) Rules 2016 w.e.f. January 01, 2016. I find, that the writ petition was filed by the respondent Nos. 1 and 2 School on September 01, 2021 that is, after this Court had heard the parties in this petition and directed listing of the petition on September 08, 2021. It is surprising that when an issue with regard to grant of benefits under the 7^{th} CPC by the petitioner has been heard and kept for orders by this Court, whether the respondent Nos. 1 and 2 School could have challenged the order of the Director of Education calling upon the Schools to pay the benefits thereof.

8. In any case, it is clear that the attempt of the respondent Nos.1 and 2 School was to prevent this Court from deciding this writ petition. In fact, it is with that view, Mr. Varma had mentioned the matter on September 06, 2021, of which a reference has been given by me in the order dated September 08, 2021, which I have already reproduced above.

9. That apart, I find on perusal of the writ petition being W.P.(C) No. 9586/2021, though a reference of this writ petition has been made by the respondent Nos.1 and 2 at many places but it is not stated that the instant writ petition was argued on August 25, 2021 and kept for orders on September 08, 2021. On a specific query to Mr. Varma, whether he, while appearing before the Co-ordinate Bench brought to the attention of the Coordinate Bench the fact that the instant writ petition has been finally heard and kept for orders on September 08, 2021, the answer was in the negative. If that be so, there is a concealment of an important aspect from the

Court, which considered the writ petition being W.P.(C) 9586/2021, for the reasons apparent.

10. In find, in terms of the order dated September 03, 2021, in W.P.(C) 9586/2021 the Coordinate Bench of this Court has, by noting the fact that W.P (C) No. 11595/2019 filed by the petitioners and also several other petitions filed by several other Schools, interim orders have been passed, observed that the said interim orders shall bind the parties in W.P.(C) No. 9586/2021.

11. In the order dated November 05, 2019 in W.P.(C) No. 11595/2019, the Court has only said that the petitioners will maintain *status quo* with regard to the enhancement of fee till the next date of hearing. Further, the respondent shall not take any coercive action. In other words, there is no order with regard to non-payment of the benefits under the 7th CPC. In any case, this petition being an earlier petition filed by the petitioners (who are the employees) and who are not parties in the petitions filed by the respondent Nos.1 and 2, can be decided.

12. In the present writ petition, the issue which arises for consideration is whether the petitioners are entitled to the benefit of the 7th CPC w.e.f. January 01, 2016. Mr. Rakesh Kumar, learned counsel for the petitioners, would contend that there are surplus funds available with the respondent Nos.1 and 2 and there is no reason for the respondent Nos.1 and 2 to deny the benefits of the 7th CPC to the petitioners herein. He also stated that the issue is no longer *res-integra* in view of the judgment of the Coordinate Bench of this Court, wherein this Court had granted the benefits of the 7th CPC to the petitioners in ***Kuttamparampath Sudha Nair v.***

***Managing Committee Sri Sathya Sai Vidya Vihar and Anr.*, W.P.(C) 928/2019,** dated May 06, 2021. That apart, he has relied upon the following judgments in support of his submissions:-

(i) ***Akhil Dilli Prathmik Shikshak Sangh (Regd.) & Ors. v. Govt of NCT of Delhi & Anr., LPA 158/2020;***

(ii) ***Rukmani Devi Jaipuria Public School v. Sadhna Payal & Ors., LPA 286/2010;***

(iii) ***Meenu Thakur v. Somerville School and Ors., W.P.(C) 8748/2010;***

(iv) ***Nagar Nigam Sewa Nivrit Karmchari Kalyan Samiti and Ors. v. Gyanesh Bharti, CONT. CAS (C) 524/2020.***

13. On the other hand, Mr. Varma, learned counsel for the respondent Nos. 1 and 2 would contest the submission made by Mr. Rakesh Kumar by stating that there are no surplus funds available with the respondent Nos.1 and 2 to grant the benefits of the 7th CPC to the petitioners. In substance, it is his plea that financial hardship is a ground for denial of the benefits of 7th CPC to the petitioners.

14. Mr. V. Balaji, learned counsel for the Directorate of Education would reiterate the submissions made by Mr. Rakesh Kumar. He states, there is already a conclusion of the Directorate of Education that surplus funds are available with the respondent Nos.1 and 2 for grant of the benefits of the 7th CPC. He also states that in view of Section 10 of the Delhi School Education Act, 1973 and the Rules made thereunder, the respondent Nos. 1 and 2 are

bound to implement the benefits of 7th CPC in favour of the petitioners.

15. Having heard the learned counsel for the parties, a pure legal issue arises for consideration in this petition whether the benefits of the 7th CPC are liable to be granted by respondent Nos. 1 and 2 in favour of the petitioners herein. I am of the view that the issue is no longer *res-integra* in view of the judgment of the Coordinate Bench of this Court in the case of ***Kuttamparampath Sudha Nair (supra)***, wherein similar pleas advanced by the School in that writ petition were negated by this Court while considering the provisions of the Delhi School Education Act, 1973 in the following manner:-

> *"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 he 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:-*
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> > *"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*

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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 <u>Deepika Jain vs. Rukmini Devi Public School & Ors.</u> ***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.*

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39. Accordingly, the writ petitions deserve to be allowed. <u>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</u>.

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 <u>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</u>."

(emphasis supplied)

16. There is no submission by Mr. Varma that the judgment of the Coordinate Bench in the aforesaid case has been stayed by an Appellate Court. In other words, the judgment of the Coordinate

Bench in ***Kuttamparampath Sudha Nair (supra)*** still holds the field.

17. Further, the Division Bench of this Court in ***Rukmani Devi Jaipuria Public School (supra)*** has held as under:

> *"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.*
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> *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."*

18. In the case of ***Akhil Dilli Prathmik Shikshak Sangh (Regd.) & Ors. (supra)*** the Division Bench vide order dated June 26, 2020 while dealing with the similar issue stated the following:

"4. To say the least, this is a very sorry state of affairs. The teachers cannot be left on a wing and a prayer. They must be released their rightful dues without any further delay. As they are being made to discharge COVID-19 duties at the instance of the Delhi Government, they can be well equated with COVID-19 warriors. Despite that they are being deprived of their rightful dues from March, 2020 onwards. ……"

19. In that view of the matter, this Court is of the considered opinion that for reasons of parity, the prayers made by the petitioners need to be allowed and the respondent Nos. 1 and 2 are directed to grant the benefits of 7th CPC in favour of the petitioners herein and the arrears of the 7th CPC shall be disbursed to the petitioners within a period of six months from today, making it clear that henceforth i.e., from the month of October, 2021, the petitioners shall be paid full salary in terms of the 7th CPC but no interest is liable to be paid by the respondent Nos.1 and 2.

20. The petition is disposed of, subject to payment of cost of Rs.10,000/- by the respondent Nos.1 and 2 to each of the petitioners and a further cost of Rs.1,00,000/- be deposited with the Delhi High Court Middle Income Group Legal Aid Society within four weeks from today.

CM Nos. 10806/2020, 12659/2020, 17092/2020, 17189/2020, 30909/2020 & 24744/2021 (for direction to respondent School for releasing the salary / wages of the petitioners)

In view of the order passed in the writ petition above, the present applications have become infructuous and are dismissed.

CM No. 6041/2019 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

SEPTEMBER 22, 2021/*ak*