

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

% Date of decision: 14th December, 2021

+ W.P.(C) 5859/2020, CM No. 21169/2020

VINITA SINGH & ORS.

..... Petitioners

Through: Mr. Sudhir Naagar and Mr. Bhanu
Sanoriya, Advs.

versus

GOVT OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Zoheb Hossain and Mr. Vivek
Gurnani, Advs. for R-1 & R-2
Ms. Seema Dolo, Adv. for R-4/CBSE

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. The present petition has been filed three persons /
petitioners with the following prayers:

*“It is therefore, most respectfully, prayed that this Hon’ble
Court may kindly be pleased to:*

*1) Issue a writ of mandamus or an appropriate
writ/order/direction thereby directing the respondents to
take appropriate action to ensure implementation of the
provisions of Employees’ State Insurance Act, 1948,
Employees Provident Funds and Miscellaneous
Provisions Act, 1952, The Payment of Gratuity Act, 1972
in the respondent no.3 school in respect of all employees/
the petitioners.*

*2) Issue a writ of mandamus or any other appropriate
writ, order or direction thereby directing the respondent
no.3 school to pay full salary to the petitioners in
consonance with Section 10(1) of Delhi School
Education Act, 1973 as per recommendation of VII*

Central Pay Commission w.e.f 01.01.2016 by transferring the same to the bank accounts of petitioners and to pay arrears of salary w.e.f. 01.01.2016 @Rs.62,000/- per month with an interest @18% p.a.

3) Issue a writ of mandamus or any other appropriate writ, order or direction thereby directing the respondents no.1, 2 and 4 to take appropriate action as per law against the respondent no.3 school for violating the provisions of Delhi School Education Act, 1973 and Rules and notifications issued there under and for violating CBSE Affiliation Bye-laws.

4) Pass any other order(s) as this Hon'ble Court may deem fit, in the facts and circumstances of the case, in the interest of justice."

2. The case of the petitioners is that they have been working as PGT/TGT in the respondent No.3 / School on a regular basis. On March 28, 2013 respondent No.2 Department of Education issued notification extending the applicability of provisions of Employees Provident Funds and Miscellaneous Provisions Act, 1952 to the private schools in Delhi. Similar notifications have been issued in respect of other beneficial legislations like Payment of Gratuity Act, 1972. Pursuant to the recommendations of the 7th Central Pay Commission, ('7th CPC', for short), Directorate of Education ('DoE' for short) issued a notification on October 17, 2017 whereby all the private recognised schools were asked to implement the same. The grievance of the petitioners is two-fold that, respondent No.3 School has not given them salaries / benefits in terms of the recommendations of the 7th CPC. That apart, they are neither providing salary slips, nor paying salary through account transfer nor are they providing appointment letters. Further the benefits like General Provident Fund ('GPF', for short), Employees Service

Insurance Scheme ('ESI', for short) and payment of gratuity is not being given to the teachers of the respondent No.3 School.

3. Mr. Sudhir Nagar, learned counsel appearing for the petitioners would reiterate the stand as taken by the petitioners in the writ petition. He also relied upon the Judgment as rendered by this Court from time to time being *Vardhaman Shiksha Mandir Senior Secondary School and Anr. v. Govt. of NCT of Delhi & Ors. 2017 SCC OnLine Del 6656*. According to him, the notifications issued by the DoE with regard to the provident fund and payment of gratuity needs to be adhered to by the respondent No.3. He seeks the prayers as made in the writ petition.

4. Counter-affidavit has only been filed by respondent Nos. 1 and 2, wherein it is stated that respondent No.3 is a private unaided recognised school and is bound by the directions / circulars / notifications / orders issued by the respondent Nos. 1 and 2. With regard to payment of benefits, it is stated by the counsel for respondent Nos. 1 and 2 that in terms of Section 10(1) of the Delhi School Education Act, 1973 & Rules ('DSEA&R', for short), the teachers of the unaided recognised private schools are to be paid salary at par with that of the teachers of corresponding status in the Schools run by the appropriate authority, i.e., the DoE. It is also stated that the Schools are under an obligation to make payment of salaries to the staff by the 7th day of each month, as provided under the provisions of the DSEA&R. They refer to the complaints received on May 30, 2020 and June 22, 2020 which have been forwarded to the respondent No. 3 for their comments, but no such comments have been sent by the respondent No.3 School. It is also

stated that the teachers / employees working in a private unaided recognised school are entitled to other allowances at par with the employees / teachers of the Government School in terms of Section 10(1) of the DSEA&R.

5. Respondent No. 3, though had filed a counter-affidavit, the same was returned as being under objection. It appears that the counsel has not removed the objection (s) to get the same placed on record.

6. I have heard learned counsel for the parties. The grievance of the petitioners, as stated by their counsel, has two facets; (1) the payment of salary in terms of recommendations of the 7th CPC and (2) grant of benefits like GPF, payment of gratuity and ESI.

7. In so far as the issue of payment of salary is concerned, the same is no more *res-integra* in view of the judgment of the Coordinate Bench of this court in the case of ***Kuttamparampath Sudha Nair and Ors. Vs. Managing Committee, Sri Sathya Sai Vidya Vihar and Ors., W.P. (C) 928/2019*** decided on May 6, 2021 wherein this Court rejected the plea of financial hardship taken by the School against disbursement of benefits under the 7th CPC and in paragraph 39, the Court has held as under:

“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.”

8. Similarly, this Court also in the case of ***Shikha Sharma v. Guru Harkishan Public School & Ors., W.P.(C) 3746/2020*** has granted the similar relief to the teachers therein and hence the issue of payment of salary under the provisions of 7th CPC is well settled. In paragraphs 24 & 25, this Court has held as under:

“24. Following the aforesaid judgment, even this Court in the case pertaining to grant of arrears of salary also granted similar reliefs to the petitioners in Shashi Kiran & Ors. v. Siddharth International Public School & Anr., W.P.(C) No.2734/2021; Rambir Singh Malik v. Greenfields Public School, W.P.(C) 9486/2020; and Inderpreet Kaur & Ors. v. Directorate of Education & Ors., W.P.(C) 4127/2020. This Court in a recent judgment in the case of Amrita Pritam & Ors. v. S. S. Mota Singh Junior Model School & Ors., W.P.(C) 1335/2019 dated September 22, 2021 has granted the benefits of the 7th CPC along with arrears to the petitioners therein. I may state here that an appeal has been preferred against the said judgment being S. S. Mota Singh Junior Model School & Anr. v. Directorate of Education, Government of NCT of Delhi & Ors. LPA 399/2021, however, the Division Bench has not stayed operation of the judgment in W.P.(C) 1335/2019 dated September 22, 2021. That apart, I find despite giving an undertaking to this Court and also this Court passing orders from time to time, unfortunately the benefits of the 6th CPC have not been granted. This Court is of the view that, apart from the undertaking given and also in view of the orders passed in the petitions referred to above, the petitioners are entitled to the benefits of the 6th and 7th CPC in law as well.

25. Accordingly, these writ petitions need to be allowed and the respondent / DSGMC / GHPS Society / GHPS are directed to, re-fix the salaries and other emoluments of the petitioners under 6th and 7th CPC in accordance with the rules. It is made clear that the DSGMC / GHPS Society shall ensure the compliance of the orders passed by this

Court. I take note of the submission made by Mr. Misra that neither DSGMC nor the GHPS Society in any case have any statutory liability under the provisions of the DSE Act / Rules to grant the benefits of the 6th and 7th CPC but the fact remains that the DSGMC was being represented by their functionaries in these proceedings and even the undertakings were given on behalf of DSGMC in the proceedings before this Court and as such cannot absolve itself, from ensuring that the benefits of the 6th and 7th CPC are given to the petitioners. This direction is in the facts of the cases more specifically where the claim of the petitioners is with regard to the grant of the benefit under the 6th and 7th CPC and connected issues. The petitioners shall also be entitled to arrears of pay in view of fixation of their pay under the 6th and 7th CPC, upto the date of payment subject to adjustment of salary already paid.”

9. In view of the above, the prayer for grant of salary under the 7th CPC needs to be allowed. It is ordered accordingly.

10. In so far as the submission of the learned counsel for the petitioners with regard to the payment of provident fund / gratuity and the coverage under the Employees’ State Insurance Act, 1948 (‘ESI Act’, for short) are concerned, respondent Nos. 1 and 2 have in their counter-affidavit taken a stand with regard to the issue of notifications for payment of provident fund and gratuity. In fact a reference is made to Rule 59 (2)(h) of the DSEA&R to contend that the Schools are under an obligation to maintain record related to provident fund and monthly subscription of the contributory fund by the management. The very fact that respondent Nos. 1 and 2 have issued notifications with regard to the payment of provident fund and the gratuity, the entitlement of the petitioners for the same cannot be denied. Hence, respondent No.3 School shall take immediate steps to ensure the compliance of the provisions of the

relevant Act / Rules with regard to the payment of provident fund. That apart, the School is also under an obligation to pay gratuity to the petitioners, as and when the same becomes payable. In so far as the plea with regard to the coverage of the petitioners under the ESI Act is concerned, I find that respondent No.3 has not commented on the applicability of this Act. Respondent Nos.1 & 2 shall take a decision as to whether the ESI Act is applicable to the employees and the teachers of a recognised unaided schools within 12 weeks from today and if the decision of the DoE is in the affirmative, then the same shall be communicated to the School for compliance, if the decision is in the negative then, the petitioners will be at liberty to seek any remedy as available to them in law. Accordingly, respondent No.3 is directed to grant benefits / salaries to the petitioners in terms of the provisions of the 7th CPC by re-fixing their revised salary and emoluments under the CCS Revised pay Rules, 2016. The petitioners shall be entitled to arrears thereof w.e.f. January 1, 2016 and the same shall be paid within a period of three months from today. It is made clear that the petitioners shall not be entitled to interests on the arrears of salary.

In view of the above the petition is disposed of. No cost.

CM No. 21169/2020 (for interim relief)

Dismissed as infructuous.

V. KAMESWAR RAO, J

DECEMBER 14, 2021/jg