Neutral Citation Number: 2022/DHC/005766

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

% *Date of Decision: 19th December, 2022*

\+ W.P.(C) 9880/2020 & C.M. APPL. 31518/2020, 13456/2022

LAKSHMAN SINGH ..... Petitioner

Through: Mr. Raj Kumar Mittal, Mr. Yogesh Kumar, Ms. Bharti Kapil and Mr. Hashini Khan, Advocates along with Petitioner-in-Person.

versus

MANAGING COMMITTEE THROUGH ITS CHAIRMAN, SARDAR PATEL PUBLIC SENIOR SECONDARY SCHOOL, KARAWAL NAGAR, DELHI & ORS.

..... Respondents

Through: Mr. Anuj Aggarwal, Ms. Shradha Adhikari and Mr. Shubham Pundhir, Advocates for R-1 and 2.
Ms. Avnish Ahlawat, Standing Counsel with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik and Ms. Aliza Alam, Advocates for R-3 and 4/DOE.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner *inter alia* seeking directions to Respondents No. 1 and 2/Sardar Patel Public Senior Secondary School (hereinafter referred to as 'School') for allowing the Petitioner to take online classes since the petition was filed in November, 2020 i.e. during the Pandemic Covid-19 period as also for a direction to grant benefit of pay revision under the 6th Central Pay Commission (CPC) and correct fixation of salary at par with a direct recruit appointed at a Grade pay of Rs. 4600/-. Direction

is also sought for implementing the 7th CPC recommendations at par with Delhi Government Teachers of corresponding status by virtue of Section 10(1) of the Delhi School Education Act, 1973 (hereinafter referred to as the 'Act') and grant of arrears thereof as well as other emoluments such as bonus, LTC and medical benefits etc.

2. Factual score to the extent relevant and necessary is that Petitioner was initially appointed in the School as PGT (Physics) on temporary basis w.e.f. 15.07.2011 and was appointed as a regular TGT (Maths) in Pay Band-II with Grade Pay Rs.4,600/- w.e.f. 01.07.2013.

3. Petitioner states that School is a private unaided school, recognized by the Directorate of Education (DOE), GNCTD/ Respondent No. 3 and comes under purview of the Act and thus bound by all Circulars/Orders issued by DOE, from time to time. Hence, by virtue of Section 10(1) of the Act, the pay and allowances and other benefits of the Petitioner have to be at par with the employees of corresponding status in Schools run by the Appropriate Authority.

4. Grievance of the Petitioner is that School has neither fixed his pay correctly under the 6th CPC considering his direct and fresh recruitment on 01.07.2013 nor implemented the 7th CPC recommendations. The Central Civil Services (Revised Pay) Rules, 2008 ('Rules 2008'), published in the Gazette of India by Ministry of Finance on 29.08.2008 have been duly adopted by DOE and a Circular was issued on 15.10.2008 directing Managing Committees of all private recognized Schools of Delhi (Aided and Unaided) to implement 6th CPC recommendations. To this effect, reliance is placed on Rules 8 and 9 as well as Section II of The First Schedule to the Revised Pay Rules, 2008, which are as under:

> *"8. **Fixation of pay in the revised pay structure of employees appointed as fresh recruits on or after 1.1.2006** - Section II of Part*

A of the First Schedule of these Rules indicates the entry level pay in the pay band at which the pay of direct recruits to a particular post carrying a specific grade pay will be fixed on or after 1.1.2006.

This will also be applied in the case of those recruited between 1.1.2006 and the date of issue of this Notification. In such cases, where the emoluments in the pre-revised pay scale(s) [i.e., basic pay in the pre-revised pay scale(s) plus Dearness Pay plus Dearness Allowance applicable on the date of joining] exceeds the sum of the pay fixed in the revised pay structure and the applicable dearness allowance thereon, the difference shall be allowed as personal pay to be absorbed in future increments in pay.

*9. **Rate of increment in the revised pay structure -** The rate of increment in the revised pay structure will be 3% of the sum of the pay in the pay band and grade pay applicable, which will be rounded off to the next multiple of 10. The amount of increment will be added to the existing pay in the pay band. **Illustration 5** in this regard is in the Explanatory Memorandum to these Rules. In the case of PB-3, variable rates of increment at 3% and 4% have been provided. The higher rate of increment will be granted to not more than 20% of the strength of officers in PB-3."*

xxx xxx xxx

Section II

Entry Pay in the revised pay structure for direct recruits appointed on or after 1.1.2006

PB-1 (Rs.5200-20200)

Grade pay	Pay in the Pay Band	Total
1,800	5,200	7,000
1,900	5,830	7,730
2,000	6,460	8,460
2,400	7,510	9,910
2,800	8,560	11,360

PB-2 (Rs.9300-34800)

Grade pay	Pay in the Pay Band	Total
4,200	9,300	13,500
4,600	12,540	17,140
4,800	13,350	18,150

PB-3 (Rs.15600-39100)

Grade pay	Pay in the Pay Band	Total
5,400	15,600	21,000
6,600	18,750	25,350
7,600	21,900	29,500

PB-4 (Rs.37400-67000)

Grade pay	Pay in the Pay Band	Total
8,700	37,400	46,100
8,900	40,200	49,100
10,000	43,000	53,000
12,000	47,100	59,100

5. The contention is that pay of the Petitioner, from the date of his initial joining on the post of TGT (Maths) in regular pay scale w.e.f. 01.07.2013, ought to be fixed at Basic Pay of Rs.17,140/- (Rs.12,540/- along with Grade Pay of Rs.4,600/-) in PB-II inasmuch as the

minimum entry pay for fresh recruits in Grade Pay of Rs.4,600/- is Rs.12,540/-.

6. It is further contended that the benefits of the 7th CPC recommendations embodied in CCS (Revised Pay) Rules, 2016, ('Rules 2016') ought to have been given to the Petitioner as this is a statutory obligation of the School and also a directive by the DOE by a Circular dated 25.08.2017. After giving the benefits of the 7th CPC recommendations, Petitioner is required to be placed at the stage of Rs.47,600/- in Pay Level-7 (Rs.44,900-1,42,400/-) w.e.f. 01.01.2016 under Rules, 2016. Therefore, according to the Petitioner, his pay as on 01.07.2020 ought to be Rs.55,200/- with the date of next increment being 01.07.2021 and therefore the gross salary of the Petitioner including other emoluments should be more than Rs.82,000/- as on date, whereas the School was paying Rs.24,000/- per month.

7. The next and the only other contention of the Petitioner is that from the academic session April, 2020 onwards while the School has been collecting fees from the students but the Petitioner has been paid only meagre amount and that too upto September, 2020, while no salary has been paid from October, 2020 although Petitioner was taking classes regularly from 06.04.2020. Petitioner has made representations to the DOE ventilating his grievances but to no avail.

8. Counsel for the School contests the present writ petition and at the outset submits that the writ petition deserves to be dismissed as there is concealment of material facts by the Petitioner. It is stated that Petitioner has failed to disclose that Petitioner, who was appointed on 28.06.2013 as TGT (Maths) had, in fact, tendered unconditional resignation *vide* letter dated 28.10.2019, which was duly accepted by the Competent Authority of the School *vide* letter dated 20.02.2020

and Petitioner was informed accordingly. After acceptance of the resignation of the Petitioner, he was relieved from duties w.e.f. 01.02.2020. It is also urged that the letter dated 20.02.2020, whereby Petitioner was informed of the acceptance of his resignation was also forwarded to the DOE. Therefore, once the resignation is accepted, Petitioner cannot be treated in service from the said date. It is also contended that under the Proviso to Rule 114 (A) of the Rules, if no approval is received within 30 days from the DOE, approval shall be deemed to have been received after the expiry of the said period. Therefore, assuming that there is no approval from the DOE, by a deeming fiction of law, Petitioner is to be treated as having resigned, once the resignation has been accepted by the School.

9. It is further submitted that on 23.03.2020, a Nation-wide lockdown was declared and all Schools started online classes. *Vide* letter dated 25.04.2020, Petitioner requested to take online classes *albeit* only for two hours per week. Considering his request for part time contractual service, purely for online classes, the School entered into an Employment Agreement dated 29.04.2020, relevant part of which is as follows:-

> *"2. This agreement is valid for the period of 6 months and started from 1st May 2020. This agreement can be revoked at any stage by the employer without prior information to the employee.*
>
> *3. The number of teaching hours will be 2 hours per week."*

10. Pursuant to the said Agreement, Petitioner started taking online classes and despite knowing the nature of his appointment, started demanding full salary, which was totally illegal. Finally, on 07.11.2020, School dispensed with the services of the Petitioner on expiry of 6 months period as provided in the Agreement and *vide*

letter dated 11.11.2020, informed the DOE of the factual position that obtained at that stage.

11. The stand of the School, succinctly put, is that having concealed material facts, Petitioner is not entitled to any relief from this Court. Even otherwise, upon resignation, Petitioner has lost his right to claim revisions of pay under the 6th and 7th CPCs. In any event, School is not in a position to pay revised salaries as per 7th CPC on account of acute financial crisis. Since 01.01.2016, enrolments of the students in the School have drastically reduced from 1,600 students in 2016 to 1,300 students as on 01.01.2021. In case the School is compelled to release benefits under the 7th CPC, it shall have no option but to close down or enhance the fees of the students.

12. Counter affidavit has been filed on behalf of DOE. It is stated that the School is a private recognized unaided non-minority school, administered by its Managing Committee and is bound to comply with provisions of the Act and Rules 50 and 51 of the Delhi School Education Rules, 1973 (hereinafter referred to as the 'Rules 1973'). *Vide* order dated 18.04.2020, all private unaided recognized schools of Delhi have been directed by DOE not to stop payments of salaries and/or reduce the existing emoluments payable to the teaching and non-teaching staff. Complaints were received from the Petitioner regarding online classes as well as payment of outstanding salary and non-grant of the benefits of the 6th and 7th CPC. On examining the complaints, School was directed to file its response, which it did by sending reply dated 11.11.2020, but the same was found to be unsatisfactory.

13. The contention of the DOE is that Rule 114 (A) of the Rules 1973, provides that resignation submitted by an employee of a

recognized private school shall be accepted within a period of 30 days from the date of receipt of the resignation by the Managing Committee with the approval of the Director. In the present case, no approval was ever sought by the School from the DOE and therefore the acceptance of resignation is invalid and illegal.

14. It is further submitted that under Section 10(1) of the Act, School is bound to revise the pay of the Petitioner by giving benefits of 6th and 7th CPC. In fact, a show cause notice dated 06.07.2021 has been issued to the School for violating the provisions of the Act and the Rules 1973, however, there was no response and the grievance of the Petitioner is justified.

15. Petitioner on the other hand takes a categorical position in the rejoinder that he neither tendered a resignation nor signed on the alleged Employment Agreement dated 29.04.2020 and both the documents are forged and fabricated. Without prejudice to the said position, it is the contention of the Petitioner that even assuming that the Petitioner gave his resignation, the School was bound to take approval of the DOE, which it did not and this is fortified by the stand of the DOE. It is reiterated that Petitioner cannot be deprived of benefits accruing under the 6th and 7th CPC recommendations.

16. I have heard the learned counsels for the parties and examined their rival contentions.

17. At the outset, it is pertinent to mention that the present writ petition was filed by the Petitioner seeking benefit of Pay fixation under the 6th and 7th CPC and also for a relief for permitting him to join online classes in the School and a restraint order against the School from taking any coercive action. However, the defence of the School, as evident from the counter affidavit filed, is the purported

resignation of the Petitioner for denying the benefits of the pay revisions as well as correct fixation of pay under Rules 2008 and this necessitated the adjudication of the issue pertaining to the alleged resignation. In this context, it is also relevant to take note of the order passed by the Court on 31.05.2022, which is significant and is extracted hereunder:

> *"1. The petitioner has approached this Court inter alia seeking a direction to the respondent school to correctly fix his pay as per the 6th and 7th CPC recommendations.*
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> *2. The writ petition is opposed by respondent nos.1 and 2 on the ground that the petitioner having tendered his resignation on 28.10.2019, which was duly accepted by the respondent no.1/school on 20.02.2020, is no longer an employee of the school. The petitioner vehemently denies having ever tendered any resignation.*
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> *3. After some arguments, it has been put to learned counsel for the respondent no.1 as to how the petitioner's purported resignation could be accepted by the said respondent without seeking approval of the Directorate of Education (DoE) in terms of Rule 114(A) of the Delhi School Education Act & Rules 1973. In response, he seeks to contend that a copy of the order passed by the respondent no.1 approving the resignation was duly served on the respondent no.3 on 20.02.2020 and therefore there was due compliance with Rule 114 (A) of the Delhi School Education Act & Rules.*
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> *4. Having perused the said communication, I have no hesitation in coming to the conclusion that that respondent no.1's plea that the petitioner had wilfully resigned from the service is wholly sham. Absolutely nothing has been placed on record by respondent nos.1 and 2 to show that the respondent no.1 had ever sought approval of the DoE within the time period specified under Rule 114(A) of the Delhi School Education Act & Rules.*
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> *5. At this stage, learned counsel for the respondent prays for time to obtain instructions.*
>
> *6. At request, list on 02.06.2022."*

18. Contention of the School is that there is material concealment in the petition inasmuch as the Petitioner has failed to disclose that he had tendered resignation or executed the Employment Agreement dated 29.04.2020. The said contention, in my view, merits rejection. Petitioner has disputed and denied that he tendered resignation or executed and signed any agreement and therefore, the stand of the

School that there is concealment of material fact cannot be accepted. Ms. Ahlawat, has categorically stated during the course of arguments, on instructions, that records of the DOE do not reflect any communication from the School seeking approval and this fortifies the stand of the Petitioner that the plea of alleged resignation is merely an afterthought.

19. Even assuming for the sake of argument that the Petitioner had tendered his resignation and the same was accepted by the School, it cannot be treated as a valid resignation in the eyes of law, in absence of approval by the DOE, in light of the provisions of Rule 114 (A) of the Rules 1973, which clearly provide that resignation submitted by an employee of a recognized private school shall be accepted by the Managing Committee with the approval of the Director. Counsel for the School takes shelter under the Proviso to the said Rule and submits that if no approval is received within 30 days from the DOE, there is deemed approval. This argument in my view does not aid the School in view of the clear stand of the DOE that no approval was ever sought from the Director, as per the record available in the office of the DOE. Therefore, in the absence of even seeking an approval under Rule 114(A), it is not open to the School to invoke the Proviso to the said Rule and seek benefit thereof. As aforementioned, this Court had *vide* order dated 31.05.2022 made an observation that there is nothing on record to show that the School had sought approval of the DOE as per Rule 114(A) of Rules, 1973 and therefore the plea is wholly sham. School had sought time to take instructions in the matter and even today the School is unable to establish the plea raised, significantly neither was the order dated 31.05.2022 assailed by the School nor has it been able to rebut the stand of the DOE that no communication was

received by the Directorate seeking approval for acceptance of the resignation allegedly tendered by the Petitioner. In this view, the stand of the Respondent that it was justified in denying the benefit of the pay scales under the Pay Commission's Recommendations on account of resignation cannot be accepted.

20. Petitioner seeks benefits of pay revisions under the 6th and 7th CPC, which undisputably, the School is under a statutory obligation to pay. Insofar as the 6th CPC benefits are concerned, there are two fold grievances ventilated by the Petitioner: (a) benefits of pay revision; and (b) correct fixation of pay w.e.f. 01.07.2013, at the stage of Rs.17,140/- in PB-II. Insofar as the entitlement of pay revisions under the 6th and 7th CPC are concerned, the issue is no longer *res integra* and I may allude to the judgment of this Court in ***Shikha Sharma v. Guru Harkrishan Public School & Ors, 2021 SCC OnLine Del 5011***, relevant paras of which are as follows:

> *"26. So, it is clear that the pay and allowances of the employees of unaided minority Schools cannot be less than those of the employees of the Government run Schools. There is no dispute that the benefits of 6th and 7th CPC have been given to the employees of the Government run Schools. If that be so, the employees of the unaided minority Schools are also entitled to get the benefits of the recommendations as made by the 6th and 7th CPC reports. So, this plea of Mr. Abinash Kumar Mishra is liable to be rejected. The plea of Mr. Mishra, that till such time the DoE grants approval to the Schools to collect the arrears of fees, the Schools must not be directed to pay the benefits of 7th CPC is concerned, the same is unmerited. The employees are entitled to equal pay and other benefits, by operation of Section 10 of the DSE Act, in other words, by operation of law, the said benefits are payable. The same does not pre-suppose the approval being granted by the Director to the Schools to claim higher fee or arrears thereof.*
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> *xxx xxx xxx*
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> *28. 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 v. Siddharth International Public School, W.P.(C) No. 2734/2021; Rambir Singh Malik v. Greenfields Public School, W.P.(C) 9486/2020; and Inderpreet Kaur v.*

Directorate of Education, W.P.(C) 4127/2020. This Court in a recent judgment in the case of Amrita Pritam v. S.S. Mota Singh Junior Model School, 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 v. Directorate of Education, Government of NCT of Delhi 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.

29. 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.

30. The arrears thereof under the 6th CPC shall be paid to the petitioners with interest at the rate of 6% per annum. The arrears of 7th CPC shall not carry any interest. The fixation of pay and arrears shall be made/paid within a period of six months from today. All retiral benefits shall also be fixed and released to the petitioners, who have retired from their service within six months from today. As an immediate assistance, the respondents/DSGMC/GHPS Society/GHPS shall release an amount of Rs. 5 Lacs to each of the retirees within one month, subject to adjustment at the time of full payment. It is made clear that the failure to pay the amounts within six months as directed above shall entail payment of a higher interest of 9% per annum on the arrears of both 6th and 7th CPC and retiral benefits.

> *31. On the issue of grant of transport allowance/dearness allowance, the DoE in consultation of the GHPS in which petitioners, who sought such relief are working shall pass order, by considering the orders in the cases being CONT. CAS.(C) 46/2016 dated January 09, 2017 and in W.P.(C) 2132/2011 dated March 06, 2013 and instructions, if any, and convey the decision to those petitioners, within 10 weeks from today. Similarly, the claim of some petitioners for MACP in W.P.(C) 6407/2018, W.P.(C) 11152/2019 and W.P.(C) 12006/2019 shall be decided by the DoE in consultation with the GHPS in which the petitioners, who sought such relief are employed and convey the same to those petitioners, within 10 weeks from today. If the benefits are payable, the same shall be released to the petitioners within six months thereafter."*

21. The second limb of the argument of the Petitioner is for correct fixation of his pay in the revised pay structure in accordance with Rules 8 and 9 of Rules 2008 read with Section II of Part A of the First Schedule. Rule 8 of Rules 2008 clearly provides that the entry level pay of direct recruits to a particular post carrying a specific grade pay will be fixed on or after 01.01.2006 in accordance with First Schedule of Section II of Part A. A bare perusal of Section II as extracted above shows that the entry level pay for direct recruits appointed on or after 01.01.2006 in the Grade Pay of Rs.4,600/- is fixed at Rs.12,540/- and therefore the basic pay by adding the Grade Pay of Rs.4,600/- comes to Rs.17,140/-. It is not disputed by the School that the Petitioner was appointed as TGT (Maths) on 01.07.2013 and therefore by virtue of Rule 8, Petitioner is entitled to fixation of Basic Pay of Rs.17,140/- (Rs.12,540/- + Rs.4,600/-) in PB-II. Petitioner is also right in his contention that consequent upon the correct fixation of the entry pay under the 6th CPC, he would be entitled to be fixed at a higher stage in Pay Level 7 with effect from 01.01.2016 under Rules 2016.

22. For all the aforesaid reasons, it is directed that Respondents No. 1 and 2/School shall refix the salary of the Petitioner by fixing his Basic Pay at Rs.17,140/- w.e.f. 01.07.2013 with consequential fixation

under the 7th CPC and release the arrears accordingly. The arrears of pay under the 6th and 7th CPC shall be released within a period of six months from today with interest at the rate of 6 % per annum on the arrears accruing under the 6th CPC. It is further directed that in case the arrears are not released within the timelines fixed by the Court, the School shall be liable to pay interest at the rate of 9% per annum on both the 6th and 7th CPC arrears. It is also directed that the balance salary of the Petitioner which is unpaid from the date he was not permitted to join classes shall be released after granting the benefit of the pay revision within eight weeks from today. Insofar as the allowances such as TA/DA are concerned, decision shall be taken by the School in accordance with the direction issued by the Court in accordance with ***Shikha Sharma (supra).***

23. Writ petition is allowed to the aforesaid extent and disposed of along with pending applications.

JYOTI SINGH, J

DECEMBER 19, 2022/*sn/rk/shivam*