

\$~83, 86, 87, 88 & 89

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

% *Date of Decision: 14th December, 2022*

83

+ W.P.(C) 2353/2022

MEENU SACHDEV Petitioner

Through: Ms. Indrani Ghosh, Advocate.

versus

MANAGING COMMITTEE SRI SATHYA SAI VIDYA
VIHAR AND ANR. Respondent

Through: Mr. Anurag Lakhotia and
Mr. Udit Dwivedi, Advocates for R-1.

Mr. Yeeshu Jain, Additional Standing
Counsel with Ms. Jyoti Tyagi, Advocate for
R-2.

86

+ W.P.(C) 2387/2022

RITA DIWAN Petitioner

Through: Ms. Indrani Ghosh, Advocate.

versus

MANAGING COMMITTEE SRI SATHYA SAI VIDYA
VIHAR & ANR. Respondents

Through: Mr. Anurag Lakhotia and
Mr. Udit Dwivedi, Advocates for R-1.

Mr. V. Balaji and Mr. Nizamuddin,
Advocates for R-2.

87

+ W.P.(C) 2396/2022

SEEMA ARORA Petitioner

Through: Ms. Indrani Ghosh, Advocate.

versus

MANAGING COMMITTEE SRI SATHYA SAI VIDYA
VIHAR & ANR. Respondents

Through: Mr. Anurag Lakhotia and
Mr. Udit Dwivedi, Advocates for R-1.

Mr. Yeeshu Jain, Additional Standing

Counsel with Ms. Jyoti Tyagi, Advocate for R-2.

Ms. Latika Choudhary, Advocate also for R-2/DOE.

88

+ W.P.(C) 2397/2022

JAYATI MOZUMDAR Petitioner

Through: Ms. Indrani Ghosh, Advocate.

versus

MANAGING COMMITTEE SRI SATHYA SAI VIDYA
VIHAR & ANR. Respondents

Through: Mr. Anurag Lakhotia and
Mr. Udit Dwivedi, Advocates for R-1.

Mr. Yeeshu Jain, Additional Standing
Counsel with Ms. Jyoti Tyagi, Advocate for
R-2.

89

+ W.P.(C) 2424/2022

VARUNA SHARMA Petitioner

Through: Ms. Indrani Ghosh, Advocate.

versus

MANAGING COMMITTEE SRI SATHYA SAI VIDYA
VIHAR & ANR. Respondents

Through: Mr. Anurag Lakhotia and
Mr. Udit Dwivedi, Advocates for R-1.

Mr. Yeeshu Jain, Additional Standing
Counsel with Ms. Jyoti Tyagi, Advocate for
R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petitions have been filed by the Petitioners praying *inter alia* for issuance of a writ of mandamus directing Respondent No. 1/School to pay salaries and emoluments to the Petitioners as per

the recommendations of the 7th Pay Commission w.e.f. 01.01.2016 and correct fixation of salaries from 01.01.2006 giving the benefit of pay revision under 6th CPC recommendations, at par with their counterparts in the Government and Government aided schools, by virtue of provisions of Section 10(1) of Delhi School Education Act and Rules, 1973 (hereinafter referred to as '**DSE&R**'). On account of similitude of facts and common questions of law in all the writ petitions, they have been heard together and are being decided by this common judgment. For the sake of convenience, Respondent No. 1, which is the Managing Committee of Sri Sathya Sai Vidya Vihar, is being referred to as '**School**' and Respondent No. 2/Director of Education is being referred to as '**DOE**', hereinafter.

2. Factual matrix to the extent germane for deciding the present petitions is that Petitioners are employed with the School and their respective dates of appointments and other relevant details are set out below in a tabular form:

Sl. No.	Writ Petition	Name	Date of Appointment	Subject
1.	W.P.(C) 2353/2022	Meenu Sachdev	04.07.1991	TGT
2.	W.P.(C) 2387/2022	Rita Diwan	01.08.1997	TGT (ENGLISH)
3.	W.P.(C) 2396/2022	Seema Arora	July, 1998	PRT
4.	W.P.(C) 2397/2022	Jayati Mozumdar	20.07.1998	PGT (CHEMISTRY)
5.	W.P.(C) 2424/2022	Varuna Sharma	01.07.1996	TGT (SCIENCE)

3. Pursuant to the recommendations of the 6th Central Pay Commission (CPC), Central Civil Services (Revised Pay) Rules, 2008 were notified. Likewise post-recommendations of the 7th CPC, Central Civil Services (Revised Pay) Rules, 2016 were notified and published on 25.07.2016 by Ministry of Finance, Government of India.

4. Case set up by the Petitioners is that while other private schools have extended the benefits of 6th and 7th CPC recommendations to their Teachers and other employees, Management of the School has not implemented the said recommendations, despite the directives issued by the Government of NCT of Delhi *vide* Circulars dated 15.10.2008 and 17.10.2017 respectively, to that effect. Constrained by the inaction of the School, representation dated 20.09.2021 was made to the Managing Committee, followed by reminders, but to no avail, compelling the Petitioners to approach this Court for direction to the School to revise the salaries and emoluments.

5. Grievances of the Petitioners can be placed in two categories: (a) pay revision under 7th CPC; and (b) revision of pay under 6th CPC. Consequent arrears on account of re-fixation of salary and allowances are also sought. Contention of the Petitioners is that they are entitled to pay revisions under the 6th and 7th CPC at par with the employees of corresponding status in Schools run/aided by the Government, by virtue of provisions of Section 10(1) of the DSE&R, which have a binding force and ought to be complied with in letter and spirit and failure of the School to give similar treatment makes it liable for de-recognition under Section 4(1)(a) of the DSE&R. Components of the benefits claimed in the present petitions, as summarized in the writ petitions, are as follows:

S. NO.	Components of Dues	Amount
(a)	Arrears of Salary from 01.01.2006 after fixation of pay as per recommendations of the 6 th Pay Commission till date.	Calculated as per Rules as applicable to Govt. school employees.
(b)	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.

(c)	Arrears of Annual Bonus not paid till date	-do-
(d)	Arrears of Dearness Allowance instalments not paid till date	-do-
(e)	Arrears of 50% DA merger	-do-
(f)	Interest @18 % per annum on the dues till the actual date of payment from the date the same became payable	

6. It is urged by Ms. Ghosh that the issues raised in the present writ petitions are squarely covered by the judgments of this Court in ***Shikha Sharma v. Guru Harkrishan Public School and Others, 2021 SCC OnLine Del 5011*** and ***Kuttamparampath Sudha Nair v. Managing Committee Sri Sathya Sai Vidya Vihar and Another, 2021 SCC OnLine Del 2511.***

7. DOE supports the Petitioners and submits that the School is under a statutory liability to revise the salary of the Petitioners as per the recommendations of the Pay Commissions. School contests the claims of the Petitioners. Insofar as payment of arrears from the year 2006, consequent to pay revision under the 6th CPC are concerned, a preliminary objection is raised by the School to the maintainability of the writ petitions on ground of delay and laches and it is urged that the writ petitions be dismissed on this ground. Without prejudice to the said objection, it is urged that if the petitions are entertained by the Court, at the highest, Petitioners should be granted arrears only upto 3 years, preceding the year of filing the writ petitions and to support this submission, reliance is placed on the following judgments:

- a. State of Orissa and Another v. Mamata Mohanty, (2011) 3 SCC 436;***
- b. Ms. Preeti Sharma v. Ganga International School and Ors., 2017 SCC OnLine Del 6621;***
- c. Lata Rana & Ors. v. D.A.V. Public School & Ors., 2018 SCC OnLine Del 11254;***

***d. Ritika Sharma v. D.A.V. Primary School & Ors.,
W.P.(C) No. 51/2021 and LPA No. 32/2021;***

***e. Prem Thakran v. Govt. of NCT of Delhi and Ors., LPA
No. 381/2018 and SLP Diary No. 14250/2019.***

8. On merits of the claims, both under the 6th and 7th CPC, there is no serious contest/opposition in the counter affidavit or even during the course of hearing, save and except, that the School is undergoing financial hardship and would be unable to meet the expenditure, especially towards payment of arrears, consequent to pay revisions under the 6th and 7th CPC.

9. I have heard the learned counsels for the parties and examined their respective contentions.

10. The neat legal nodus that arises in all these writ petitions is whether the Petitioners are entitled to the benefits of pay revisions under the 6th and 7th CPC, including arrears thereof. The issue, in my opinion, as rightly contended by the Petitioners, is no longer *res integra*. This Court in ***Kuttamparampath Sudha Nair (supra)***, has examined the vexed question of applicability of Section 10(1) of DSE&R to private recognized unaided schools and relevant part of the judgment is as under:

“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 v. 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 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.

xxx

xxx

xxx

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 v. Guru Nank Public School 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 v. Guru Harkishan Public School in W.P. (C) 12372/2009 decided on 02.09.2011, Deepika Jain v. Rukmini Devi Public School in W.P.(C) 237/2013 decided on 23.09.2013 and the judgment of Division Bench in Guru Harkishan Public School v. Gurvinder Singh Saini 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 v. Union of India (1986) 4 SCC 707 : 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.

xxx

xxx

xxx

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.

xxx

xxx

xxx

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 v. Managing Society National Public School 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 orders No. 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.

xxx

xxx

xxx

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."

xxx

xxx

xxx

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.””

11. The issue again arose for consideration before this Court in ***Shikha Sharma (supra)*** and the Court held 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.”

12. From a reading of the aforesaid judgments, this Court finds merit in the plea of the Petitioners that their case is covered by the judgments on all four corners and similar benefits ought to be granted to them. It would be pertinent to note that the Respondent School in the present case and in the case of ***Kuttamparampath Sudha Nair (supra)*** is the same and for this additional reason, no distinction can be drawn between the Petitioners herein and the Petitioners in the said case. It is therefore held that Petitioners are entitled to the benefits of the pay revisions under the 6th and 7th CPC recommendations and

consequent re-fixation of their salaries and emoluments in accordance with the Revised Pay Rules, 2008 and Revised Pay Rules, 2016, w.e.f. 01.01.2006 and 01.01.2016, respectively, in light of the statutory provisions of Section 10(1) of the DSE&R. In case benefits of the 6th CPC have been granted to any Petitioner but fixation has not been correctly done, the School shall ensure that correct re-fixation is done and arrears of the differential amounts are released.

13. Coming to the argument raised on behalf of the School that on account of the financial hardship, the School will be unable to bear the burden of disbursing the revised salaries and emoluments, more particularly, the arrears, suffice would it be to note that this argument stands negated and rejected by this Court in the aforementioned two judgments. Relevant part of the judgment in ***Kuttamparampath Sudha Nair (supra)*** is as follows:

*“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 v. State of Kerala*, AIR 1962 SC 12 and *Hydro (Engineers) Private Ltd. v. 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. v. State of Karnataka*, (1999) 6 SCC 567, 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 v. 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.) v. The Manager, No. 1 Air Force School**

Palam 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 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 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 v. Rukmini Devi Public School 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 v. Somer Ville School 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 v. Sadhna Payal 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.”*

14. The last plank of the argument of the School is that the writ petitions be dismissed on the ground of delay and laches, particularly with respect to the claim for revision of pay under 6th CPC or in the alternative, the arrears be restricted to three years prior to the filing of the writ petitions. There cannot be any dispute on the proposition of law sought to be canvassed on behalf of the School that when the writ petition is hit by delay and laches with respect to claims pertaining to pay scales, arrears are ordinarily restricted to a period of three years. However, this principle bears a caveat and is not without exception. Where the employer is under a legal or statutory obligation to revise the salaries and emoluments giving benefits, from time to time, under the various pay commissions, but fails to fulfill the obligations, it

cannot seek restriction of payment in arrears and escape the liability incurred due to its own wrong doing. In a recent judgment in ***Keraleeya Samajam and Another v. Pratibha Dattatray Kulkarni (Dead) Through Lrs and Others, 2021 SCC OnLine SC 853***, one of the issues before the Supreme Court was whether the arrears of the salaries payable under 5th and 6th Pay Commissions ought to be restricted to three years preceding the filing of the writ petition and the Supreme Court held as follows:

*“5. Having heard Shri Shekhar Naphade, learned Senior Advocate appearing on behalf of the petitioners and learned counsel appearing on behalf of the respondents and considering orders passed in earlier round of litigations which ended up to this court the liability of the management to pay the salaries to the teaching and non-teaching staff as per the 4th Pay Commission and 5th Pay Commission ended in favour of the teaching and non-teaching staff working with the petitioners. **Therefore as and when the 6th Pay Commission recommendations was made applicable as such it was the duty cast upon the petitioners' institution to pay the salary/wages to the teaching and non-teaching staff as per the applicable pay scale as per the 6th Pay Commission recommendation and for which the staff was not required to move before the Deputy Director (Education) again and again. Therefore, the submissions on behalf of the petitioners that as the respondents approached the Deputy Director (Education) subsequently and therefore the question with respect to the limitation will come into play and therefore the respondents shall be entitled to the arrears of last three years preceding the filing of the writ petitions cannot be accepted.***

(Emphasis supplied)

6. The respondents were compelled to approach the Deputy Director only when the petitioners though were required to pay the wages as per the applicable rules and as per the recommendation of 6th Pay Commission, failed to make the payment, the respondents were compelled to approach the Deputy Director (Education) thereafter. Therefore for the lapse and inaction on the part of the petitioners, the respondents cannot be made to suffer and deny the arrears of the salaries as per the 6th Pay Commission recommendation, which otherwise they are entitled to. Every time the teachers were not supposed to approach the appropriate authority for getting the benefit as and when there is a revision of pay as per the pay commission recommendations.”

15. This issue also arose before a Division Bench of this Court in *Vidya Bharati School v. Directorate of Education & Ors.*, in *LPA No. 541/2018* decided on 16.09.2022 and relying on the judgment of the Supreme Court in *Keraleeya Samajam and Another (supra)*, the Division Bench held that limiting the claim of arrears to three years prior to filing the writ petition is untenable in view of the dicta of the Supreme Court. The Division Bench held that the School did not comply with the directions and obligations when it was required to do so by revising the salaries in accordance with Section 10(1) of the DSE&R on account of the revision under 6th CPC and now due to lapse of time, it cannot take away the benefits because of its own recalcitrance to comply with Government's directions and statutory obligations. Non-compliance over a long period would not create any special equities in favour of the School and it does not get absolved of its statutory obligation to pay salaries in terms of 6th Pay Commission recommendations, as pay revisions in terms of Pay Commissions' recommendations is a matter of public policy, with the objective of ensuring that with passage of time, purchasing power of the Government employee is not denuded by inflation and other relevant factors. Even in *Shikha Sharma (supra)*, this Court has directed release of arrears under 6th CPC to the Petitioners in the said case without any restrictions/limitation of three years prior to the filing of the writ petitions and in fact, has also directed payment of interest @ 6% per annum with a further direction that on failure to pay the amounts within six months as directed by the Court, the School will incur a liability of payment of a higher rate of interest i.e. 9% per annum on the arrears of both 6th and 7th CPC.

16. In view of this position of law, the argument of the School that

the writ petitions are barred by delay and laches and/or the arrears be restricted to three years cannot be countenanced and the contention only deserves to be rejected. Coming to the judgements relied upon by the School on this aspect, as referred to in paragraph 7 above, suffice would it be to state that in view of the binding dicta of the Supreme Court in *Keraleeya Samajam and Another (supra)* and the judgment of the Division Bench in *Vidya Bharati School (supra)*, which also binds this Court, the judgments relied upon by the school, cannot come to the aid of the school.

17. Accordingly, the writ petitions are allowed and the School is directed to revise the salaries and other emoluments of the Petitioners, by granting benefits of pay revisions under the 6th and 7th CPC, embodied in the Revised Pay Rules, as aforementioned, including Dearness Allowance, annual bonus etc. as per the directions in the judgements aforementioned. Petitioners shall also be entitled to arrears of pay on account of the refixation, subject however to adjustment of salaries/emoluments already paid.

18. It is made clear that the arrears under the 6th CPC shall be paid to the Petitioners with interest at the rate of 6% per annum while arrears of 7th CPC shall not carry any interest. The entire exercise of fixation and disbursement of amounts consequent thereto, to the Petitioners, shall be carried out within six months from today. Failure to pay the amounts as directed, within six months, shall entail payment of interest @ 9% per annum on the arrears of 6th and 7th CPC benefits.

19. Writ petitions stand disposed of in the aforesaid terms.

JYOTI SINGH, J

DECEMBER 14, 2022/sn/shivam

Signature Not Verified

Signed By: KAMAL KUMAR W.P.(C) 2353/2022 and connected matters

Signing Date: 05.01.2023
23:28:13

Page 21 of 21