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

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

\+ W.P.(C) 17345/2022

CHARANJIT KAUR ..... Petitioner

Through: Mr. Nikhilesh Kumar, Advocate.

versus

GURU HARKRISHAN PUBLIC SCHOOL AND ORS. ..... Respondents

Through: Mr. Abinash K. Mishra & Mr. Gaurav Kr. Pandey, Advocates for R-1 & 2.

Ms. Latika Chaudhary, Advocate for R-3.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

CM APPL. 55166/2022 (Exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

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3. Present writ petition has been filed by the Petitioner seeking directions to Respondents No. 1 and 2 to release the balance arrears towards gratuity, leave encashment, TA/DA and arrears on account of pay revisions under 6th Central Pay Commission (CPC) and 7th CPC, along with interest thereon. Writ of mandamus is also sought for a direction to Respondent No. 3/Directorate of Education to prepare due and drawn statement of the husband of the Petitioner with respect to

the arrears due to him as the Petitioner is unaware of the outstanding amounts.

4. Issue notice.

5. Mr. Abinash K. Mishra, learned counsel accepts notice on behalf of Respondents No. 1 and 2.

6. Ms. Latika Chaudhary, learned counsel accepts notice on behalf of Respondent No.3.

7. Facts are in a narrow compass. Petitioner's late husband namely Sh. Jasbir Singh was appointed as a Peon on 20.08.1991 with Respondents No. 1 and 2/School. After serving for around 27 years, he unfortunately expired on 10.06.2018 and is survived by the Petitioner, three daughters and one son. After the death of her husband, Petitioner was appointed on the same post but under a contract, with fixed remuneration.

8. Grievance of the Petitioner is that she is not aware of the actual amounts outstanding towards her husband on account of the terminal benefits and other dues. Petitioner has been requesting and making representation to the School, time and again, to provide her with the computation/calculation of the amounts outstanding and due to the Petitioner's husband as well as to release the arrears, however, the School has neither provided the computation nor disbursed the entire arrears. Having no other option, Petitioner has approached this Court.

9. It is submitted by the learned counsel for the Petitioner that the School has handed over 24 post-dated cheques of Rs.30,000/- each, i.e for a sum of Rs. 7 lacs, however, the outstanding amounts are far more. Petitioner is in a state of penury and has three daughters to fend for and despite several requests the arrears have not been released, despite passage of nearly 4 years from the date of death of her

husband. Reliance is placed on the judgment of this Court in ***Shikha Sharma v. Guru Harkrishan Public School and Others, 2021 SCC OnLine Del 5011***, wherein this Court has directed the School to release arrears of the 6th and 7th CPC to the Petitioners therein along with interest @ 6% p.a. on the arrears under 6th CPC and certain other benefits.

10. Mr. Abinash K. Mishra, learned counsel is unable to dispute that the issues raised in the present writ petition are squarely covered by the judgment of this Court in ***Shikha Sharma (supra)*** and seeks some time to release the arrears due to the Petitioner, on account of the service rendered by her late husband.

11. I have heard the learned counsels for the parties.

12. Petitioner is right in her submission that the relief pertaining to arrears of salary and emoluments on account of pay revisions under the 6th and 7th CPC cannot be denied to her and the issue is covered by the judgement of this Court in ***Shikha Sharma (supra).*** Even otherwise, it is a statutory obligation of the School to disburse the benefits of pay revisions under the Pay Commissions' recommendations and the denial and/or delay in grant of the said relief is neither understandable nor acceptable. In view of the directions passed by the Co-ordinate Bench of this Court in ***Shikha Sharma (supra),*** the writ petition deserves to be allowed. Relevant paragraphs of the judgment 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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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."

13. Petitioner's late husband had admittedly served the school for nearly 27 years and it is not the case of the school that he was subject to any disciplinary proceedings and is thus entitled to gratuity, in accordance with law. Petitioner is also entitled to leave encashment based on the leave accumulated during the service. There is no gainsaying that these benefits have to be paid, taking into account the revised salary.

14. It is accordingly directed that Respondents No.1 and 2 shall refix the salary and other emoluments of the late husband of the Petitioner granting benefit of pay revisions under the 6th and 7th CPC and release arrears thereof to the Petitioner, within a period of 8 weeks from today. The arrears under the 6th CPC shall be paid with interest @ 6% per annum while no interest will be paid on the arrears of 7th CPC. In case the payments are not released within the timelines granted by the Court, Respondents No. 1 and 2 shall be liable to pay interest @ 9% per annum from the dates the amounts were due till the date of actual payment. Payments towards gratuity and leave encashment etc. shall also be disbursed within 8 weeks, failing which interest @ 6% per annum shall be payable till the date of payments.

15. Insofar as TA/DA arrears are concerned, in ***Shikha Sharma (supra)***, the Court passed the following directions:-

> *"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."*

16. Respondent No. 3 is accordingly directed to pass appropriate orders in consultation with the School in light of the orders passed in Contempt Case No.46/2016 dated 09.01.2017 and in W.P.(C) 2132/2011 dated 06.03.2013, as directed by the Court in ***Shikha Sharma (supra).*** The decision shall be conveyed to the Petitioner within 6 weeks from today. Needless to state that whatever amounts are determined to be due to the Petitioner, the same shall be released within two weeks thereafter. However, if the decision is otherwise, same shall be conveyed to Petitioner and it is left open to the Petitioner to take appropriate remedies in law, to assail the said decision, if so advised.

17. At this stage, learned counsel for the Petitioner submits that the Petitioner is unaware of the actual dues payable to her as no computation or calculations have been supplied to her. Mr. Mishra fairly submits that detailed statement of calculations with break-ups of the amounts due and payable to the Petitioner shall be supplied within

4 weeks. Let the needful be done within 4 weeks. It is left open to the Petitioner to point out to the School, discrepancy/difference, if any, in the amounts paid and those payable to the Petitioner.

18. With the aforesaid directions and observations, the present writ petition stands disposed of.

JYOTI SINGH, J

DECEMBER 19, 2022/*sn/shivam*