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

% *Date of Decision: 23rd December, 2022*

\+ W.P.(C) 17635/2022

HARDEEP KAUR ..... Petitioner

Through: Mr. Parminder Singh Goindi, Advocate

versus

DIRECTOR EDUCATION & ORS. ..... Respondents

Through: Mr. Abinash K. Mishra with Mr. Rakesh Kaushal and Mr. Gaurav Kumar Pandey, Advocates for R-2 to 5.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

C.M. APPL. 56375/2022 *(exemption)*

Allowed, subject to all just exceptions.

Application is disposed of.

W.P.(C) 17635/2022

1. Present writ petition has been filed by the Petitioner seeking the following reliefs:

> *"A) That the respondent no. 1 may kindly be directed to take legal action against the respondent No. 2 to 5 available under the relevant provisions of Law;*
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> *B) That such order(s) may kindly be passed to direct the respondent Nos. 2 to 5 to release all the retirement benefits such as Balance amount of Gratuity of Rs. 12,02,752/- (Rupees Twelve Lakhs Two Thousand Seven Hundred and Fifty Two only).*
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> *C) Leave Encashment of Rs. 3,29,938/- (Rupees Three Lakh Twenty Nine Thousand Nine Hundred and Thirty Eight Only).*
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> *D) arrears of salary as per 6th Pay Commission of Rs. 2,45,875/- (Rupees Two Lakhs Eighty Fourty Five Thousand Eight Hundred and Seventy Five Only) and arrears of salary as per 7th Pay commission alongwith, Travelling Allowance (TA).*

E) Arrears of salary deducted during covid pandemic period of Rs. 3,86,985/- (Rupees Three Lakhs Eighty Six Lakhs Nine Hundred and Eighty Five Only.

F) Interest on delayed payment @ 18% P.A. to the petitioner; G) That the respondent Nos. 2 to 5 may kindly be directed to pay damages to the tune of Rs. l0,00,000/- to the petitioner for wasting precious years of the petitioner;

H) Any other or further relief which this Hon'ble Court may kindly deem fit in the facts and circumstances of the case be also passed in favour of petitioner and against the respondents."

2. At the outset, learned counsel for the Petitioner, on instructions, submits that Petitioner does not press reliefs (A), (F), (G) and (H) in the prayer clause.

3. The brief narrative of facts is that Petitioner was appointed as Office Administrator on 28.04.1987 and retired from the post of PGT (Commerce) Teacher on 31.01.2022 from Respondent No. 2 School/ Guru Harkrishan Public School.

4. The grievance ventilated by the Petitioner in the present writ petition is that on her retirement she was entitled to receive all terminal benefits such as Gratuity, Leave Encashment as well as arrears on account of pay revisions under the 6th and 7th CPC and Travelling Allowance. It is the case of the Petitioner that having served for 35 years, the total amount of Gratuity due to the Petitioner comes to approximately Rs.15,02,752/-.

5. Counsel for the Petitioner contends that the Petitioner retired on 31.01.2022 with an unblemished service record and till date she has been running from pillar to post to get her retirement dues and despite representations and reminders the benefits have not been released to her, save and except, a sum of Rs.3,00,000/- towards Gratuity that too in three equal instalments. It is further submitted that Petitioner is also entitled to Leave Encashment/Earned leave due upto January, 2022 for 133 days and the total amounts come to Rs.3,29,938/-. Claim is also

made for arrears on account of pay revisions under the 6th and 7th CPC and as per the calculation put forth by the Petitioner, the total arrears of salary under the 6th CPC are to the tune of Rs.2,45,875/-. Petitioner also claims arrears of salary under the 7th CPC after refixing her salary for the period after 01.01.2016 giving the benefit of the pay revision.

6. Learned counsel further submits that during the Pandemic COVID-19 period the School had unilaterally and without the consent of the Petitioner deducted 40% of the monthly salary for the period April, 2020 to February, 2021 while for the month of June, 2021 only 20% of the salary was paid. Directions are therefore sought to the School to release the balance salary for the said period besides the arrears of Travelling Allowance. It is submitted that several representations and reminders have yielded no result, compelling the Petitioner to approach this Court.

7. Learned counsel further submits that the writ petition deserves to be allowed as the case of the Petitioner is now squarely covered by the judgment of this Court in ***Shikha Sharma v. Guru Harkrishan Public School & Ors, 2021 SCC OnLine Del 5011.***

8. Issue notice.

9. Counsel, as above, accepts notice on behalf of Respondents No. 2 to 5 and submits that whatever dues are payable to the Petitioner shall be paid and some time be granted to do the needful. He is unable to dispute that the reliefs sought are covered by the judgment of this Court in ***Shikha Sharma (supra).***

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

11. Having perused the judgement in ***Shikha Sharma (supra),*** this Court is of the view that reliefs sought by the Petitioner towards the arrears of the 6th and 7th CPC and the retiral benefits are covered by

the directions issued in the said judgment, 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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> *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.*
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> *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."

12. Petitioner was appointed with the School on 28.04.1987 and retired on superannuation on 31.01.2022. From the calculation sheet appended as Annexure P1 to the writ petition, it is reflected that the Petitioner rendered service for 34 years 9 months and 4 days out of which the period of Earned Leave balance upto June, 2022 is 133 days. The Petitioner has submitted the calculations of the amounts due

to her towards the arrears of salary under the 6th and 7th CPC and Gratuity, Leave Encashment etc.

13. Writ petition is accordingly allowed, directing Respondents No. 2 to 5 to refix the salary and emoluments of the Petitioner under the 6th and 7th Pay Commissions, in accordance with the CCS (Revised Pay) Rules, 2008 and 2016, respectively. Petitioner shall also be entitled to arrears of pay under the 6th and 7th CPC subject to the adjustment of the salary paid. Arrears of 6th CPC shall carry interest @ 6% per annum. The entire exercise of fixation of pay and arrears shall be completed within a period of six months from today. All retiral benefits shall be fixed and released to the Petitioner within six months and as an immediate assistance, the School shall release an amount of Rs.5,00,000/- to the Petitioner subject to adjustment at the time of complete payment. Failure to comply with the timelines granted by the Court will make the School liable for payment of interest @ 9% per annum till the date of actual payment. Decision on payment of TA/DA shall be taken as per the direction issued by the Court in ***Shikha Sharma (supra).*** Since the Petitioner has admittedly received an amount of Rs.3,00,000/- towards Gratuity the same shall be adjusted while paying the Gratuity.

14. Petitioner has furnished the calculations of the amounts due to her, as aforementioned, in Annexure-P1 to the writ petition. The School shall look into the said calculations and make payments accordingly. In case, there is any discrepancy or variations in the amounts due taking into account the service record of the Petitioner, it is open to the School to seek clarifications from the Petitioner, who shall cooperate in arriving at the correct calculations so that the amounts outstanding can be disbursed to her expeditiously.

15. Writ petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

DECEMBER 23, 2022/kks/shivam