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

% *Date of Decision: 10th January, 2023*

\+ W.P.(C) 241/2023

SUDHA KATOCH & ANR. ..... Petitioners
Through: Mr. J.S. Bedi and Mr. Amandeep Singh Bhalla, Advocates.

versus

DIRECTORATE OF EDUCATION & ORS. ..... Respondents
Through: Mr. Gaurav Dhingra, Advocate for R-1.
Mr. Mohit Sharma, Advocate for Mr. A.K. Mishra, Advocate for R-2 to 4.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

C.M. APPL. 904/2023 (Exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

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3. Present writ petition has been filed seeking the following reliefs:

> *"a) Issue a writ of mandamus, order or direction, directing the Respondent No.1 to calculate arrears towards salary (due and drawn statement) from 2006 to till date/retirement and to calculate TA, DA, 6CPC & 7CPC Arrears Gratuity and leave encashment.*
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> *b) Issue a writ of mandamus, order or direction, directing the Respondent No. 2 to 4 to release the terminal benefits to the Petitioner which includes gratuity as per caping of Rs. 20 Lakhs, leave encashment, arrears towards 6th Pay Commission, Arrears of DA and TA from 2014 till retirement, Implementation and release arrears towards 7th Pay Commission with interest;*
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> *c) Issue a writ a mandamus, order or direction, direct the respondent No 2 to 10 to release pending 40% salary to petitioner from Jan, 2020 to Feb 2021 with Interest of 9% per annum till the date of release of arrears of pending salary.*

d) Issue a writ a mandamus, pass similar Judgment W.P. (C) 3746/2020 and connected matters titled as Shikha Sharma V/s GHPS & Ors "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 ₹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."

e) pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

4. Petitioners in the writ petition are serving/retired employees with Respondents No. 3 and 4/Guru Harkrishan Public School (hereinafter referred to as the 'School'). It is the case of the Petitioners that Respondent No. 1/Directorate of Education (DOE) had issued a Circular dated 11.02.2009, directing all schools to implement 6th CPC recommendations. When the School failed to implement the said directions, several teaching and non-teaching employees filed a writ petition in this Court being W.P.(C) No. 2132/2011, which was allowed on 06.03.2013, directing the School to pay the arrears of 6th CPC within three months along with interest @ 6% per annum. An Execution First Appeal being EFA (OS) No. 7/2014 was filed before the Division Bench for compliance of the order dated 06.03.2013 and an undertaking was furnished on behalf of the School to clear all arrears of the 6th CPC. Several contempt applications were also filed and *vide* order dated 09.01.2017, Respondents were directed to make payments with interest, within two weeks, in accordance with the directions in the order dated 06.03.2013, which included payments towards Transport Allowance.

5. It is further averred that after the 7th CPC recommendations, DOE passed an order dated 17.10.2017, directing all unaided private recognized schools to implement the 7th CPC recommendations w.e.f. 01.01.2016 and also frame guidelines.

6. It is the case of the Petitioners that despite the directions of this Court and the Circulars issued from time to time by DOE, the School has not implemented the recommendations of the 6th CPC in entirety and the arrears towards Transport Allowance from September, 2009 to March, 2017 are still pending. The recommendations of the 7th CPC have also not been implemented and this is despite the fact that some of the Petitioners have now retired without pay revisions. It is also submitted on behalf of the Petitioners that Gratuity is a statutory right of an employee and there is no plausible reason with the School for having withheld payments towards the Gratuity *albeit* upto the statutory ceiling/capping of Rs.20,00,000/-.

7. Learned counsel for the Petitioners submits that the grievances ventilated by the Petitioners in the present writ petition are covered on all four corners by the judgment of this Court in ***Shikha Sharma v. Guru Harkrishan Public School & Ors, 2021 SCC OnLine Del 5011*** and therefore, directions be issued to the School to release pending 40% salaries to the Petitioners from January, 2020 to February 2021, after granting pay revisions under the 6th and 7th CPC along with arrears thereof as well as for releasing the allowances such as TA, DA etc. It is further submitted that with respect to the Petitioners who have retired on superannuation, terminal benefits including Leave Encashment, Gratuity etc. be released and directions be issued for consideration of the claims towards Transport Allowance and Dearness Allowance as per the directions issued by the Court in ***Shikha Sharma (supra).***

8. Issue notice.

9. Counsels, as above, accept notice on behalf of the Respondents.

10. Learned counsel appearing for Respondent No. 1/DOE supports the case of the Petitioners while learned counsel appearing for the School is unable to dispute that the reliefs sought in the present writ petition are squarely covered by the judgment in ***Shikha Sharma (supra).***

11. Having heard the learned counsels for the parties, this Court finds merit in the contention of the Petitioners that the reliefs sought in the present writ petition are covered by the judgment in ***Shikha Sharma (supra),*** relevant passages from 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.

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."

12. Accordingly, the writ petition is allowed, directing the School to refix the salaries and other emoluments of the Petitioners under the 6th and 7th CPC and release the arrears thereof including balance of the 40 % salaries wherever and for the period for which they are due. The arrears of 6th CPC shall be paid with interest @ 6% per annum while the arrears of 7th CPC shall not carry any interest. The entire

exercise of fixation of pay and payment of arrears/release of balance salaries shall be completed within a period of six months from today. On failure to pay the amounts within six months as directed above, Petitioners shall be entitled to interest at the rate of 9% per annum on the arrears of both 6th and 7th CPC.

13. It is further directed that in case of the Petitioners who have retired, all retiral/terminal benefits shall be released within six months from today, after taking into account the pay revisions under the 6th and 7th CPC. As an immediate relief, an amount of Rs.5,00,000/- shall be released to the retirees within one month, subject to adjustment when the complete payments are made. Failure to release the retiral/terminal benefits, within six months, will entail payment of interest at the rate of 9% per annum from the date the benefits became due till actual payments. Insofar as Gratuity is concerned, the same shall be released to the Petitioners who have retired, subject however, to the statutory ceiling limit under the Payment of Gratuity Act, 1972, as amended, in accordance with law.

14. On the issue of TA and DA, the Court in ***Shikha Sharma (supra)*** 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."*

15. The School is directed to take a decision with respect to TA/DA in accordance with the aforesaid directions, within ten weeks from today. Respondent No.1/DOE is directed to draw out a calculation of

the arrears towards salaries/terminal benefits due to the Petitioners and the due and drawn statement shall be furnished to them within a period of eight weeks from today.

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

JYOTI SINGH, J

JANUARY 10, 2023/rk/shivam