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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CONT.CAS(C) 1001/2019 & CM APPL. 10738/2022**

DAVINDER BHARDWAJ Petitioners
Through: Ms. Indrani Ghosh, Advocate
versus

MINI KHANNA & ANR Respondent
Through: Mr. Kamal Gupta, Mr. Sparsh
Aggarwal and Ms. Paridhi Bisht,
Advocates for Respondent Nos. 1 and
2

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Reserved on: 17.02.2023
Date of Decision: 06.04.2023

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. This contempt petition has been filed by the Petitioner on 15.11.2019 stating that Respondents, who are the officers of Green Fields School, A-2 Block, Safdarjung Enclave, New Delhi – 110029, ('School') have not complied with the directions issued by a coordinate Bench of this Court *vide* order dated 23.04.2019 passed in W.P.(C) 13794/2018, the relevant portion whereof reads as under:

"For prayer b, the petitioner seeks direction thereby directing respondent no.2 to grant financial upgradation as per norms and pay all the consequential benefits including the benefits of the 7th pay commission recommendations as per the mandate of section 10(1) of the Delhi School Education Act, 1973.

Mr. Sabu Sebastian, Senior Accountant on behalf of respondent no.2 is present in person and submits that in view of the prayer 'b', benefits to the petitioner shall be granted within four weeks.

On the basis of the statement of Mr. Sabu Sebastian, officer on behalf of respondent no.2, I hereby dispose of the present petition directing respondent no.2 to pay all consequential benefits to the petitioner within four weeks from the receipt of this order.

(Emphasis supplied)

2. In compliance with the order dated 17.02.2023, the Petitioner has filed written submissions dated 20.02.2023 and the Respondent No.2 has filed short note dated 20.02.2023.

3. The Petitioner stated in the contempt petition that the order dated 23.04.2019 was passed by the Court relying on the statement of the Senior Accountant of the School assuring that financial upgradation will be granted to the Petitioner herein along with all consequential benefits in terms of prayer (b) as sought in W.P.(C) 13794/2018.

3.1. In the petition, the Petitioner also raised a specific averment regarding the financial upgradation granted to Sh. N.L. Sharma, who is junior to the Petitioner herein. She states that though the Petitioner joined service on 01.01.1990, she is drawing a grade pay of Rs. 4,800, whereas Sh. N.L. Sharma, who joined service subsequently on 01.04.1991 has got the upgradation and is drawing a higher grade pay of Rs. 5,400. She states that, therefore, the School has refused to comply with the directions issued *vide* order dated 23.04.2019.

4. Notice in this petition was issued *vide* order dated 21.07.2020. On the said date of hearing, the Respondents had stated that the order dated 23.04.2019 stands complied with and all arrears and dues have been paid to the Petitioner. In this regard, this Court directed the Respondents to file a compliance affidavit. The relevant portion of the order dated 21.07.2020 reads as under:

“Issue notice.

Mr. Amit Saxena, learned counsel for Respondent No.1, accepts notice and at the outset, on instructions, submits that the order dated 23.04.2019 has been complied with and the requisite benefits have been released to the Petitioner.

Ms. Indrani Ghosh, however, rebuts this submission.

Let reply/compliance affidavit be filed within a period of four weeks.

Rejoinder, if any, be filed before the next date of hearing.”

(Emphasis supplied)

5. Subsequently, *vide* order dated 15.10.2020, this Court has taken note of the submission of the Respondents that most of the benefits in terms of the order dated 23.04.2019 have been disbursed to the Petitioner, which was disputed by the learned counsel for the Petitioner. The relevant portion of the order dated 15.10.2020 reads as under:

“Mr. Amit Saxena submits that most of the benefits in terms of the order dated 23.04.2019 have been disbursed to the Petitioner. Ms. Indrani Ghosh, however, vehemently opposes the submission and submits that the Petitioner has not been given the financial upgradation in terms of the judgment, as per which she is entitled to the grade pay of Rs. 5400 in PB-2, for the pre-revised scale of Rs. 8000-13,500/- under the 5th Pay Commission. She also submits that revised benefits under the 7th Pay Commissioner have not been disbursed to the Petitioner on the basis of the upgraded pay scales.”

(Emphasis supplied)

6. A compliance affidavit has been filed by Respondent No.1 on 10.12.2020, wherein it is stated that the pay-band of the Petitioner stood revised to Rs. 9300-34800, with grade pay of Rs. 5400; and the entire outstanding amount of Rs. 11,51,589/-, inclusive of financial upgradation and 7th Central Pay Commission (‘7th CPC’) has been paid over to the Petitioner. The Respondents have also placed on record a certificate dated 15.11.2020 confirming that a financial upgradation in the grade pay of Rs. 5400 has been awarded to the Petitioner.

6.1. In addition, the Respondents filed a reply dated 07.01.2021 to the

contempt petition. In the said reply, it is categorically stated that during the pendency of the W.P.(C) 13794/2018, the Petitioner was promoted from Trained Graduate Teacher ('TGT') to Post Graduate Teacher ('PGT') w.e.f. 01.01.2019. It is further stated that in compliance with prayer (b) of the W.P.(C) 13794/2018, the Petitioner has been granted all consequential benefits on her promotion to the post of PGT and all benefits, including arrears upon implementation of the 7th CPC recommendation.

6.2. In the said reply, it is also stated by the Respondents that Modified Assured Career Progression Scheme ('MACP') or any financial upgradation thereunder is not admissible to the employees of private unaided schools in New Delhi. In this regard, reliance is placed on the order dated 02.12.2014 issued by Department of Education ('DoE') as well as the judgment dated 04.11.2019 passed by the Division Bench of this Court in LPA No. 808-809/2017.

6.3. With respect to the financial upgradation in the grade pay of Rs. 5400 granted to Sh. N.L. Sharma, it is stated by the Respondents that the same has been granted mistakenly and the School has initiated appropriate proceedings to undo/withdraw the aforementioned grant to Sh. N.L. Sharma. It is stated that upgradation was granted to Sh. N.L. Sharma mistakenly. It is also stated that Mr. N.L. Sharma is one out of almost 100 employees at the School. It was stated that the Petitioner has been paid a further sum of Rs. 3,25,608/- towards MACP under mistaken legal advice, which she is not entitled to and the same is liable to be refunded to the School.

6.4. In the written submission filed by the Respondents, it has been clarified that the financial upgradation of grade pay of Rs. 5400 granted to Sh. N.L. Sharma was withdrawn in month of December, 2020.

7. A reply has also been filed on behalf of DoE on 18.02.2021 placing on record its stand with respect to the inapplicability of MACP scheme to private unaided schools, though the cause title of the said reply, mistakenly reads as W. P (C) No. 9928/2020, Kuttamparampath Sudha Nair v. Managing Committee Sri Sathya Sai Vidya Vihar & Anr.

8. During the course of the proceedings on 17.02.2023, the learned counsel for the Respondent has also placed reliance on the order dated 25.10.2022 passed by DoE in the case of Guru Harkishan Public School, whereby it has been held that DoE has not issued any direction or guidelines for implementation of MACP scheme in private unaided schools. The said order has also been placed on record along with the written submissions.

8.1. The learned counsel for the Respondent states that in view of these facts and circumstances, there has not been wilful disobedience of the order dated 23.04.2019 and all benefits which the Petitioner is duly entitled to in law have been granted to her.

9. This Court has heard the learned counsel for the parties and perused the paper book. Both the parties during the course of oral arguments have reiterated the submissions made by them in the respective pleadings.

10. The limited issue which is sought to be agitated by the Petitioner in this contempt petition is that the Petitioner is entitled to benefit of financial upgradation as per MACP scheme. In this regard, the Petitioner continues to rely upon the upgradation to granted to the Sh. N.L. Sharma, though it has not been disputed that the said upgradation has since been withdrawn prospectively, i.e., from the month of December, 2020.

10.1. The Petitioner has also not disputed the submission of the Respondents to the effect that DoE has repeatedly and consistently taken a

stand that financial upgradation under the MACP scheme is not applicable mandatorily to private unaided schools.

10.2. The Petitioner has also not disputed the submission of the Respondents that the Division Bench of this Court *vide* judgment dated 04.11.2019 has held that no guidelines have been issued by DoE till date for implementation of MACP scheme in the case of private unaided schools.

The relevant paragraphs of the judgment read as under:

“21. We have examined the ACP Scheme, the MACP Scheme and the materials placed on record. The appellant has been granted three financial upgradations in her career through promotion or otherwise. The ACP scheme, which came into force w.e.f 09.08.1999, clearly provides that the first financial upgradation has to be granted after 12 years of regular service. It is a matter of record that the appellant was appointed as an Assistant Teacher on 09.12.1977. Thereafter, on 01.08.1978, she got her first financial upgradation wherein she was promoted from the post of Assistant Teacher to TGT. Since the appellant got her first promotion within 12 years of her service, therefore, she is not entitled to the benefit of first financial upgradation under the ACP Scheme.

*22. **MACP Scheme came into force w.e.f. 01.09.2008. Respondent no. 1, vide its office circular dated 05.10.2008, directed the schools to implement the 6th Pay Commission recommendations, however, no Guidelines have been issued till date for implementation of the MACP Scheme in private unaided recognized schools. Therefore, reliance cannot be placed on Section 10 of the Delhi School Education Act, 1973 as respondent no. 1 has nowhere mandated the implementation of MACP Scheme for private unaided schools.** In any case, respondent school has admittedly granted financial upgradation of a higher pay scale with effect from 01.09.2011 to the appellant wherein she was placed in the Pay Band of Rs.9300- 34,800/- with a Grade Pay of Rs.5400/- and after availing the same, the appellant retired in the year 2013.”*

(Emphasis supplied)

10.3. The Petitioner has also not disputed that DoE in its affidavit dated 15.05.2015 filed in W.P.(C) No. 1905/2015 has taken a stand to the same effect. The relevant portion of the affidavit reads as under:

“9-12. That in reply to Para Nos. 9-12, it is submitted that the Petitioner got

her 1st ACP after 12 years in 1999 as per ACP scheme of 5th Pay Commission Report. It is relevant to point out that the Modified Assured Career Progression Scheme (MACP) had become operational w.e.f. 01.09.2008 and the financial upgradations as per provisions of the earlier ACP Scheme (of August 1999) can be granted only till 31.08.2008. As such, the petitioner cannot ask for financial upgradation as per provisions of the earlier ACP Scheme (of August 1999) after 31.08.2008 [The Office Memorandum dated 19.05.2009 of Ministry of Personnel, Public Grievances and Pensions, Govt. of India, is enclosed herewith as ANNEXURE-R-1/A]. Insofar, as financial upgradation under MACP scheme is concerned, the same cannot be granted to the petitioner because if Modified Assured Career Progression Scheme (MACP) was to be implemented in unaided private school, it would need the concurrence / approval of the Hon'ble Lt. Governor after placing the same before the Delhi School Advisory Board. The Director of Education disposed of the petitioner's representation correctly declining 2nd financial upgradation under MACP scheme holding that she was not entitled to the same on the premises that if Modified Assured Career Progression Scheme (MACP) was to be implemented in unaided private school, it would need the concurrence / approval of the Hon'ble Lt. Governor after placing the same before the Delhi School Advisory Board."

(Emphasis supplied)

10.4. The learned counsel for the Petitioner has however, sought to place reliance on the proceedings dated 31.10.2022 recorded by a coordinate Bench of this Court in W.P.(C) 10552/2020 and W.P.(C) 3386/2021, wherein it was observed that one of the issues arising in the said writ petitions are applicability of the MACP scheme to the employees of private unaided schools. She however, fairly, concedes that no final order has been passed in the said petitions.

11. In the aforesaid facts and circumstances, and the stand taken by the Respondents that no other employee of the School has been granted financial upgradation under the MACP scheme, this Court is of the opinion that the Respondents have not acted in wilful disobedience of the order dated 23.04.2019 passed in W.P.(C) 13794/2018.

11.1. The order dated 23.04.2019 was passed on the statement made by the

accountant of the Respondent and without contest. There is no finding by the coordinate Bench on the applicability of the MACP scheme to the School and its employees; thus, in view of the stand taken by the Respondent that no other employee of the School has been granted financial upgradation under the MACP scheme, this Court does not find the Respondents to be in wilful disobedience of the order dated 23.04.2019.

11.2. In view of the arguments advanced by the Respondents, and the averments made in the compliance affidavit and the reply, this Court is satisfied that the Respondents have complied with the directions contained in the order dated 23.04.2019 by duly releasing all the consequential benefits to the Petitioner as directed in the said order. The notice issued by this Court *vide* order dated 21.07.2020 is discharged.

12. The issue as regards the applicability of MACP scheme to employees of private unaided schools is pending adjudication in W.P.(C) 10552/2020 and W.P.(C) 3386/2021. It is clarified that this Court has not examined the issue of the applicability of the said schemes to private unaided schools and the stand of the DoE and related facts have been noted and considered only for the purpose of ascertaining, if the Respondents are in wilful disobedience of order dated 23.04.2019.

13. The learned counsel for the Respondent during the course of the oral submissions has admitted that the financial upgradation granted to Sh. N.L. Sharma has been withdrawn from Mr. N.L. Sharma prospectively i.e., from December 2020 and the School has resolved not to recover the payments made to him (from 2011 to 2020) on account of the said mistaken upgradation.

13.1. On the same parity, this Court deems it appropriate to pass a direction

to the effect that the School shall not be entitled to seek recovery of Rs. 3,25,608/- paid to the Petitioner herein towards MACP. This is also for the reason that the Respondents in the compliance affidavit dated 10.12.2020 have affirmed the correctness of the said payment and placed on record Annexure A-1; and the said affidavit has not been withdrawn till date. The Respondents have relied upon the said affidavit to aver compliance. Further, during the course of oral arguments, no submissions were addressed by the Respondent for affecting recovery of the Rs. 3,25,608 paid to the Petitioner and therefore, the said plea, which has not been urged, is deemed to have been abandoned by the Respondents. (*In Re: State of Punjab and Others v. Rafiq Masih (White Washer) and Others, (2015) 4 SCC 334*).

14. Accordingly, in view of the aforesaid directions, the present contempt petition and all pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J

APRIL 6, 2023/hp/ms/kv