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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 06 February, 2023

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W.P.(C) 2362/2022 & CM APPL. 56169/2022, 56444/2022

RAJEEV KUMAR DHINGRA

..... 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, Addl. Standing Counsel
with Ms. Jyoti Tyagi and Ms. Manisha,
Advocates for DOE.

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W.P.(C) 2363/2022 & CM APPL. 56443/2022

KUTTAMPARAMPATH SUDHA NAIR

..... 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. Gaurav Dhingra, Advocate for
Respondent No.2.

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W.P.(C) 2427/2022 & CM APPL. 56226/2022, 56442/2022

BIBHA JOSHI 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.

Ms. Latika Chaudhary, Advocate for
Respondent No.2.

+ W.P.(C) 2428/2022 & CM APPL. 56089/2022, 56445/2022

POONAM 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. V. Balaji and Mr. C. Kannan, Advocates
for Respondent No. 2.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. Present writ petitions have been filed by the Petitioners seeking directions to Respondent No.1/Managing Committee, Sri Sathya Sai Vidya Vihar (hereinafter referred to as the 'School') for correct fixation of the salaries and other allowances of the Petitioners in accordance with the CCS (Revised Pay) Rules, 2008, (hereinafter referred to as the 'Rules 2008'), issued in exercise of powers conferred by Proviso to Article 309 and Clause (5) of Article 148 of the Constitution of India, pursuant to the recommendations of the 6th Central Pay Commission (CPC), effective from 01.01.2006. On account of the similitude of the legal issues arising in the four petitions, they were heard together and are being decided by this common judgment.

2. The facts germane for deciding the present writ petitions are in a narrow compass. Petitioners are Teachers employed with the School and their respective dates of appointments, etc. are set out hereunder:

Sl. No.	Writ Petition	Name	Date of Appointment	Subject
1.	W.P.(C) 2362/2022	Rajeev Kumar Dhingra	12.07.2001	TGT (Physical Education)
2.	W.P.(C) 2363/2022	Kuttamparampath Sudha Nair	02.07.2001	TGT (Science)
3.	W.P.(C) 2427/2022	Bibha Joshi Sharma	01.08.2003	TGT (English)
4.	W.P.(C) 2428/2022	Poonam Sharma	10.07.1997	PGT (Maths)

3. Pursuant to the recommendations of 7th CPC, CCS (Revised Pay) Rules, 2016 ('Rules, 2016') were notified and published by the Government of India on 25.07.2016 and *vide* Circular dated 17.10.2017, Government of NCT of Delhi directed the private unaided recognized schools of Delhi to extend the benefits of 7th CPC recommendations by virtue of the mandate of Section 10(1) of Delhi School Education Act, 1973 (hereinafter referred to as 'the Act'), at par with the Government employees of corresponding status. Aggrieved by non-grant of pay revision under 7th CPC, Petitioners filed writ petitions before this Court, which were decided by a common judgment dated 06.05.2021. The writ petitions were allowed and the School was directed to refix the salaries and other emoluments of the Petitioners applying the revised pay matrix under 7th CPC. Direction was also issued for release of arrears thereon.

4. The School thereafter filed applications in the disposed of writ petitions for extension of time for compliance of the directions in the judgment dated 06.05.2021, which were dismissed by order dated 26.07.2021. As per the case set up by the Petitioners, it was only when the School started refixing the revised salaries under 7th CPC that the Petitioners realised that their salaries and emoluments were incorrectly fixed under the 6th CPC and they had not been given the benefit of the pay in the Pay Band in accordance with Rule 8 of Rules 2008 read

with Section II of Part A of the First Schedule, considering that there is direct recruitment in the posts of TGT and PGT. This was contrary to the stand taken by the School in the additional affidavits dated 23.11.2019 filed in the earlier writ petitions, wherein a categorical stand was taken by the School that 6th CPC recommendations had been implemented and Petitioners were being paid salaries and allowances as per Rules 2008 w.e.f. 01.01.2006. At that stage, Petitioners had no reason to disbelieve the stand taken in the additional affidavit and therefore the issue of correct fixation of salaries under 6th CPC was not agitated. However, once it was realized that the School had filed false affidavits and as a matter of fact the salaries of the Petitioners were incorrectly fixed under the 6th CPC, Petitioners made representations to the School for correct fixation, however, getting no response, present writ petitions were filed.

5. The grievance ventilated in the present writ petitions, succinctly put, is that Petitioners in W.P.(C) 2362/2022, W.P.(C) 2363/2022 and W.P.(C) 2427/2022 are TGTs while Petitioner in W.P.(C) 2428/2022 is a PGT and are entitled to fixation of their pay in accordance with Rule 7 of Rules 2008, with a caveat that their existing Basic Pay as on 01.01.2006 does not fall below the Basic Pay of a direct recruit appointed on or after 01.01.2006, as provided under Section II of Part A of the First Schedule of Rules 2008, with respect to Grade Pay of Rs.4,600/- and Rs.4,800/-, respectively, read with Rule 8 thereof. It is, therefore, prayed that the School be directed to correctly fix the salaries and emoluments of the Petitioners in accordance with Rules 2008 w.e.f. 01.01.2006 and grant consequential arrears with interest.

6. Learned counsels appearing on behalf of the Directorate of Education (DOE) support the case of the Petitioners and submit that it is the statutory obligation of the School to fix the salaries and

allowances of the Petitioners in consonance with the recommendations of 6th CPC embodied in Rules 2008.

7. Pertinent it is to note that the School does not contest the claim of the Petitioners for correct fixation of salaries under the 6th CPC at this stage and instead concedes to an erroneous fixation initially, however, objects to the maintainability of the writ petitions on ground of delay and laches in approaching the Court, which contention will be adverted to in the later part of the judgment. School has filed an affidavit dated 19.12.2022, wherein it is categorically stated that *albeit* initially, there was an error/anomaly in pay fixation under the 6th CPC, however, while calculating the benefits under 7th CPC, the initial anomaly has been corrected and fixation has been done in accordance with Section II of Part A of the First Schedule of Rules 2008 read with Rule 8 thereof. In case of Petitioners who are TGTs, it is stated that pay has been re-fixed by taking the entry pay in the pay band as Rs.12,540/- with Grade Pay Rs. 4600/- for arriving at Basic Pay, while for the Petitioner who is a PGT it is stated that his pay has been fixed at Rs.14,700/- + Rs.4,800/-, totaling to Rs.19,500/- and consequential benefits have been worked out under the 7th CPC. Calculation sheets in support of the said stand have been appended to the said affidavit. There is no rebuttal to the said calculations by the Petitioners.

8. At this stage, I may also take note of another contention of the School which finds mention in the applications filed subsequently for clarification of the order dated 15.12.2022, wherein it is stated that while fixing the salaries under the 7th CPC, by mistake higher amounts have been taken which error needs to be corrected. The stand on this score as brought out in Annexure B to CM APPL. 56444/2022 in W.P.(C) 2362/2022, CM APPL. 56443/2022 in W.P.(C) 2363/2022 and CM APPL. 56442/2022 in W.P.(C) 2427/2022 is that after fixing

the pay in the Pay Band under the 6th CPC at Rs.12,540/- and granting the MACP benefits, when the multiplication factor of 2.57 is applied for calculation under the 7th CPC, the amount comes to Rs.59,855.30/- and therefore as per the concerned Pay Matrix under the 7th CPC, the next highest level is Column 11, where the amount that becomes payable is Rs.60,400/-, whereas the School has, by mistake, fixed it at a higher bracket of Rs.62,200/-. A similar position is adopted in CM APPL. 56445/2022 in W.P.(C) 2428/2022 where it is stated that after applying the multiplication factor of 2.57 to Rs.26,880/-, the amounts come to Rs.69,081.60/- and therefore, as per the Pay matrix under 7th CPC, the next higher level is Column 10 i.e. Rs.69,200/-. However, by mistake, the School has fixed at a higher bracket of Rs.71,300/-. Liberty is therefore sought to carry out the necessary corrections and adjustments. In light of this, it is also prayed that the order dated 15.12.2022 be corrected to this extent, where a statement made on behalf of the School, to the contrary, is recorded.

9. While on the merits of the claims of the Petitioners, as aforementioned, the School has conceded that the earlier fixation was incorrect and as the affidavit indicates the same has been corrected, the writ petitions are primarily opposed on two-fold grounds: (a) writ petitions are barred by delay and laches; and (b) having failed to raise the grievances with respect to fixation under the 6th CPC in the earlier writ petitions, Petitioners are estopped from raising the plea at this stage. As an alternate argument, it is urged that in case the Court is inclined to entertain the writ petitions, the arrears payable to the Petitioners should be restricted to a period of three years before the date of filing the writ petitions and to support the proposition, reliance was placed on the judgments in *Ms. Preeti Sharma v. Ganga International School and Ors., 2017 SCC OnLine Del 6621, Lata*

Rana & Ors. v. D.A.V. Public School & Ors., 2018 SCC OnLine Del 11254 and Ritika Sharma v. D.A.V. Primary School & Ors., W.P.(C) No. 51/2021 and LPA No. 32/2021.

10. Learned counsel for the Petitioners, on the other hand, submits that it is only before this Court that a stand has been taken by the School that the anomaly in fixation of salaries under the 6th CPC has been corrected and even if this position is correct, the arrears of differential amounts have not been disbursed to the Petitioners. Insofar as the preliminary objections raised by the School are concerned, counsel for the Petitioners submits that firstly, there is no delay in filing the writ petitions inasmuch as it is only in the year 2021 that the Petitioners realized the incorrect fixation of their salaries and secondly, it is no longer *res integra* that revision of pay scales under the Pay Commission's recommendations is a statutory obligation of an employer and defence of delay and laches cannot be raised by an employer to deny the benefits accruing therefrom. As far as the second objection is concerned, it is argued that the earlier writ petitions were concerned with the benefits of pay revision under 7th CPC and since the School had taken a stand on an affidavit that all benefits under the 6th CPC had been disbursed, which the Petitioners believed to be true, there was no cause for raising any grievance. It was also urged that pay fixation is a complicated mechanism and it is not easy for an employee to discern the erroneous calculations made by an employer.

11. I have heard the learned counsels for the parties and examined their rival submissions.

12. Insofar as the preliminary objections are concerned, in my view, the same merit outright rejection. The earlier writ petitions filed by the Petitioners pertained to the benefits under the 7th CPC and as rightly contended by the Petitioners, that since an additional affidavit was

filed by the School taking a position that the salaries of the Petitioners had been fixed giving the benefits of the 6th CPC, there was no occasion at that stage for the Petitioners to contest the stand in the said writ petitions. It was only subsequently in the year 2021, when the School initiated the process of fixation of salaries and emoluments under the 7th CPC that the anomaly came to light. It is significant to note that even the School has taken a position that the anomaly in fixation of salaries under the 6th CPC came to light while revising the salaries and emoluments under the 7th CPC and therefore, no blame can be put on the Petitioners for not having agitated this issue at an earlier stage. Moreover, the relief claimed in the present writ petitions is for correct fixation of salaries of the Petitioners applying Rule 8 of Rules 2008 and it can hardly be disputed that correct fixation of salaries in consonance with the Pay Rules is a statutory obligation of an employer and no plea of estoppel can be raised.

13. Insofar as the objection of the School that the writ petitions are liable to be dismissed on grounds of delay and laches or that in the alternative, the arrears be restricted to three years is concerned, the same cannot be sustained. No doubt that as a proposition of law, it is correct that when parties approach the Court belatedly for seeking the reliefs pertaining to remuneration etc., ordinarily the Courts restrict the arrears to three years prior to the filing of the writ petition. However, this principle is not without exception. Courts have repeatedly held that where the employer is under a legal or a statutory obligation to revise the salaries and emoluments under the various Pay Commissions, but fails to fulfil the obligations, it cannot seek restriction of payment of arrears and escape the liability incurred due to its own wrong doing. In this context, I may usefully allude to a recent judgment of the Supreme Court in *Keraleeya Samajam and*

Another v. Pratibha Dattatray Kulkarni (Dead) Through Lrs and Others, 2021 SCC OnLine SC 853, where one of the issues before the Supreme Court was whether the arrears of the salaries payable under the 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.”

14. 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 Act 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 the Government's directions and statutory obligations. Non-compliance over a long period would not create any special equities in favour of the School and the School will not be absolved of its statutory obligation to pay salaries in terms of 6th CPC 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 v. Guru Harkrishan Public School and Others, 2021 SCC OnLine Del 5011*, 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.

15. 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 judgments 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.

16. Since the School has taken a categorical stand on an affidavit that the error in fixing the salaries of the Petitioners under Rules 2008 has been corrected inasmuch as the existing Basic Pay of the Petitioners as on 01.01.2006 has been fixed in accordance with Rule 8 of Rules 2008 read with Section II of Part A of the First Schedule for the purpose of fixation under Rule 7 of Rules 2008, as aforementioned, the only direction that is required to be given at this stage is for release of the arrears arising on account of correct fixation of the salaries and allowances in accordance with Rules 2008.

17. It is accordingly directed that the School shall release the arrears of salaries and emoluments to the Petitioners arising out of re-fixation in accordance with Rules 8 & 9 of Rules 2008 read with Section II of Part A of the First Schedule, within a period of four months from today with interest @ 6% per annum.

18. In the applications, aforementioned, School has taken a stand that by mistake, while fixing the salaries under the 7th CPC recommendations, fixation has been done at a higher bracket, on account of which excess payments have been made to the Petitioners. On this count, according to the School, Petitioners are required to pay back the differential amounts, as they cannot seek pay fixation contrary to the Revised Pay Rules.

19. Insofar as this contention of the School is concerned, needless to state that if the fixation has been done erroneously, which has

resulted in fixing the salaries of the Petitioners and/or payment of arrears in a higher bracket, the School is entitled to correct the anomaly and make adjustments. However, before carrying out the said exercise, it is directed that the School shall draw up a statement of account indicating the fixation and bringing out the alleged anomaly. The statements shall be provided to the Petitioners, who would be at liberty to respond to the same and in case it is ultimately found that the stand of the School is correct, it will be open to the School to make adjustments of the differential amounts.

20. Writ petitions are allowed and disposed of in the aforesaid terms along with the pending applications.

JYOTI SINGH, J

FEBRUARY 6th, 2023/kks/shivam