

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

% ***Reserved on: March 24, 2023***

Pronounced on: April 12, 2023

+ **W.P.(C) 3395/2019 & CM APPL. 15610/2019, 31798/2019 & 39595/2019**

MEETA CHAKRABORTY AND ORS. Petitioners
Through: **Mr.Sushil Dutt Salwan, Senior Advocate with Mr. Arjun Garg, Advocate**

Versus

GOVERNMENT OF NCT OF DELHI AND ORS. Respondents
Through: **Mr. Ajit Kumar Sinha, Senior Advocate with Mr.Srijan Sinha, Ms. Parul Dhuruey, Mr. Naveen Soni & Mr.Ayush Mishra, Advocates for respondents No.3 & 4**

**CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

JUDGMENT

CM APPL. 39739/2022 (u/S 151 CPC)

1. The present application has been preferred by the petitioners prying for award of interest @12% per annum from the due date on account of delayed payment of arrears paid by respondents No.3 & 4 as well as award for exemplary costs.
2. For just disposal of the present application, the facts pertaining to this case in brief are noted in the following paragraphs.

3. The petitioners, who are 220 in number, filed the captioned petition *inter alia* seeking implementation of recommendations of the Seventh Central Pay Commission (“7th CPC”) in the light of provisions of Section 10 of Delhi School Education Act, 1973, which mandates that the scale of pay and allowances, medical facilities, pension, gratuity and other prescribed benefits of all the employees of a private unaided recognized schools, shall not be less than that of the employees of the corresponding status in the schools run by the appropriate authority.

4. Some of the petitioners vide communication dated 27.07.2009 to respondent No.3- Sanskriti School, claim to have objected to their pay fixation pursuant to revision of pay structure consequent upon recommendations of the Sixth Pay Commission (“6th CPC”). Consequent upon acceptance of recommendations of 7th CPC, respondent No.1- Government of NCT of Delhi issued orders to the school for adoption of Central Civil Services (Revised Pay) Rules 2016 and to implement 7th CPC in respect of all its employees. Vide letter dated 02.02.2017, the staff of respondent No.3-Sanskriti School requested its Chairperson to implement the 7th CPC, who in turn had informed the staff on 28.02.2017 that the school had reserves to pay arrears of 7th CPC till December, 2016 and to increase and refix their pay, 27% fee hike is required, however, respondent No.2- Directorate of Education (DoE) was not accepting fee hike. To refute the claim of Chairperson of the School, the staff informed that like other schools, increase by only 14.29% is required, which was answered by the respondent No.3-School by stating that if the arrears of pay are paid, then the school will be liable to pay the revised salary, which could not be done.

Various rounds of communications took place between the staff and school. On 25.08.2017, respondent No.2-DoE directed all unaided private schools to implement Central Civil Services (Revised Pay) Rules 2016 in respect of all regular employees and the corresponding status in their Schools. The Executive Committee of respondent- School announced payment of the revised salary w.e.f. 01.09.2017, however, did not pay the arrears of salary.

5. Subsequently, vide e-mail dated 28.09.2017, the respondent No.3-School, in the light of Independent Auditor's report dated 25.09.2017, recorded approval of implementation 7th CPC and arrears were decided to be released w.e.f., 01.01.2016, upon approval of fee hike by the DoE. Pursuant to order dated 17.10.2017 passed by DoE, whereby unaided recognised schools were permitted to hike the tuition fees in absence of any funds available with the school, after presenting financial statement indicating income and expenditure of each account before the Managing Committee of the school, the Management Committee of the respondent No.3-School recommended hike in school fee from January, 2018. The Management Committee of the respondent No.3-School also declared that the increased salaries to the staff, inclusive of HRA, TA etc. shall be payable from December, 2017. Thereafter, petitioners and such like staff members, made various representations to respondent No.3-School seeking refixation of salary by implementing 7th CPC in 2017, 2018 and 2019. However, since no relief was granted to petitioners, the present petition was filed in April, 2019.

6. The respondents in their counter affidavit took the stand that respondent No.3-School was facing financial crunch due to insufficient

funds, which was disputed by petitioners. Vide order dated 30.07.2019, this Court appointed an independent Chartered Accountant to look into the income and expenditure of the school since the year 2016 till 2018. This Court, vide even order, also directed respondent No.2-DoE to appoint an Officer to assist the Chartered Account. Thereafter, this Court passed a detailed order extending audit of the school accounts till the year 2020.

7. When this petition came up for hearing before this Court on 10.01.2020, it was observed that in the audit report filed by the Chartered Accountant, it was stated that school was deficit for an amount of Rs.8,12,86,962/- in the financial year 2018-19. Also, school was deficit for Rs.7,21,31,884/- in the financial year 2019-2020. Thus, school was unable to pay the salary and allowances as per 7th CPC. It was also stated in the said report that School is collecting one per cent of the tuition fee for development purposes, as is reflected in the audited financial statement of financial year 2018-19.

8. On 12.03.2020, this Court was informed that salaries of the teaching and non-teaching staff has been paid in terms of recommendations of the 7th CPC from October, 2019. However, only arrears of pay from 01.01.2016 till 30.09.2019 remained to be paid and time was sought to furnish details of the funds to pay the arrears to the teachers and staff. On 26.11.2021, this Court directed respondent No.3 to pay the arrears of salary to teaching and non-teaching staff members of the school.

9. On 08.07.2022 this Court was informed that arrears of 7th CPC had already been paid to the petitioners, however, interest component was left to be paid. Consequently, the present application has been filed seeking a

direction to respondents to clear the arrears of interest on delayed payment of arrears of 7th CPC.

10. In the present application, it has been averred on behalf of the petitioners that this Court vide order dated 10.01.2020 had impleaded Civil Servants' Society as respondent No.4, as it is running the respondent No.3-School and directed it to bring a solution to pay the salary to its staff in terms of 7th CPC. Further, this Court vide order dated 12.03.2020 had directed respondent No.4 to furnish details of the funds to meet the arrears to be paid to the teachers and staff. It is stated that though pursuant to directions of this Court, respondents No.3 & 4 have paid the arrears of 7th CPC for the period from 01.01.2016 to 30.09.2019, however, the payments were made in piece meal manner.

11. During the course of hearing, learned senior counsel appearing on behalf of petitioners submitted that there has been inordinate delay in payment of arrears of 7th CPC and on account of delay, respondents No.3 and 4 are liable to pay the interest on the said amount. It was brought to the notice of this Court that the school authorities have been calling upon the petitioners to forego their interest claim against respondent No.3 school and so, 81 out of 220 petitioners arrayed in the present petition (*in terms of list Annexure P-43*) have decided to forgo their claim of interest. However, other petitioners are demanding interest @12% per annum on the arrears of salary.

12. On the other hand, learned senior counsel appearing on behalf of respondents refuted the claim of petitioners and submitted that on 08.07.2022, permission was sought on behalf of the petitioners to file an

application calculating the interest from the date of filing of the petition till amount is paid and to the contrary, the present application has been filed seeking interest from due date.

13. With regard to claim of interest raised by the petitioners, it was submitted by learned senior counsel that it has been held in several decisions that if the payments are made within the time stipulated by the Court, interest shall not be imposed. Reliance was placed upon Supreme Court's decisions in *State of Punjab Vs. Amar Nath Goyal* (2005) 6 SCC 754 and *State of Tripura & Ors. Vs. Anjana Bhattacharjee & Ors.* 2022 SCC OnLine SC 1071 to submit that the financial and economic implications are very relevant and germane for any policy decision adversely affecting the administration of any authority.

14. Lastly, it was submitted that the present case is not of default in paying interest component but that of stressed financial condition of a private unaided school, therefore, any further burden in the form of interest would unnecessarily adversely burden the financial health of the respondent No.3- School.

15. In the additional affidavit filed on behalf of respondent No.4 to this application, it is stated that arrears of pay and allowances for the period between January, 2016 and March, 2017 and that of allowance w.e.f. April, 2017 to September, 2019 have already been paid and as such, no liability under the 7th CPC is outstanding.

16. The extensive submissions addressed by learned senior counsel representing both the sides were heard and the material placed on record has been perused. This Court finds that pursuant to directions of this Court in the

present petition, respondents No.3 & 4 have paid the arrears of 7th CPC for the period from 01.01.2016 to 30.09.2019 to the petitioners and their pay has accordingly been refixed. No doubt there has been delay on behalf of respondents No.3 & 4 to pay the arrears of the 7th CPC. It is also worthy to note here that respondent No.3- School had made representation to respondent No.2-DoE seeking permission to hike the tuition fee for the academic year 2017-18, which was rejected on 21.12.2018. Even thereafter, respondent No.3 made representation to respondent No.2-DoE in January and March, 2019 to hike the school tuition fee, but the same was not replied. However, respondent No.3-School implemented 7th CPC with its limited financial means.

17. It is only pursuant to directions of this Court that respondent No.3-School received first approval from respondent No.2-DoE on 11.10.2019, whereby the fee hike was notified on 16.12.2019 relating to the year 2019-20; on 06.03.2020 relating to the year 2020-21, which were effective prospectively from 01.04.2020 and 01.10.2020. The respondent No.3-School accordingly claims to have made payments to the tune of Rs.246.42 lacs for the period from 01.04.2017 till 31.03.2018 in March, 2021. In fact in such circumstances, the school was able to make payment of arrears in three parts i.e. on 31.10.2021, 31.01.2022 and lastly, in March, 2022.

18. No doubt respondent No.3-School paid the arrears of the 7th CPC to its staff only after directions of this Court, however, this Court cannot lose sight of the fact that there has been an inordinate delay on the part of respondent No.1- GNCTD and respondent No.2-DoE to approve the fee hike, where-after respondent No.3-School could collect the funds to pay the

arrears to its staff members.

19. The controversy raised in the present application now revolves around the payment of arrears of interest, payable on the amount of arrear already paid towards 7th CPC. The petitioners herein have claimed interest @12 per cent per annum from the date it became due till it is paid. To the contrary, the respondents No.3 & 4 have claimed that the petitioners were given liberty to calculate interest from the date of filing of the petition till amount is paid. Respondents No.3 & 4 have categorically pointed out to Paras-3 & 4 in the order dated 08.07.2022 passed by this Court, wherein it is noted as under:-

“3. To this effect, learned senior counsel for the petitioners seeks permission to file an application calculating the interest from the date of filing of the petition till the amount has been paid.

4. Let needful be done within two weeks with an advance copy to the other side.”

5. Apparently, this Court while passing the aforesaid order dated 08.07.2022, on the submission of learned senior counsel for petitioners, had given to liberty to the petitioners to file an application. In the preceding Para-2 of order dated 08.07.2022, this Court has also noted Paras-5 & 7 of order dated 26.11.2021, which *inter alia* read as under:-

“5. The present petition is of the year 2019 whereas the arrears are due from the year 2016 and the arrears whatever being paid are, without interest.

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7. Needless to say, petitioners are at liberty to claim interest on the arrears after getting the payment of

complete arrears as per 7th Pay Commission.”

6. This Court while passing the order dated 26.11.2021 had made it clear that the petitioners have been paid arrears of 7th CPC without interest and they are at liberty to claim interest after getting the payment of complete arrears of 7th CPC. In the opinion of this Court the respondents No.3 & 4 have failed to understand the directions passed by this Court in its true sense by mistakenly interpreting it as a direction from this Court that the interest is payable from the date of filing of the present petition till it is payable. By saying so, respondents are in fact trying to avoid their liability towards payment of arrears of interest.

7. This Court is not hesitant to say that the claim of petitioners for arrears of interest is *bona fide*, however, what is required to be seen by this Court is as to whether in the thick of financial crunch faced by respondent No.3-School, will it be just and proper to put further financial burden on it to pay the amount of interest.

8. It cannot be disputed that the School is eminently imparting education to the children. So, its staff, both teaching and non-teaching, are pillar to the school. In case one pillar is shaken, it would not only weaken its structure but may result in collapse thereof. Relevantly, the independent Chartered Accountant appointed by this Court has already filed a note with regard to deficit financial condition of respondent No.3-School, which makes it manifestly clear that no further financial burden can be put on its shoulders, as it may result in closure of the school itself. Realizing the factum of financial hardship faced by the School, 81 petitioners out of 220 petitioners in the present petition, have foregone their claim of interest. It is

not the case that petitioners have approached this Court and they have not been granted any relief. The petitioners have already received arrears of 7th CPC and their pay has already been refixed. In the considered opinion of this Court, interest of justice would be met if equity is maintained by this Court while passing any direction.

9. Keeping in view the fact that despite having financial crunch, respondent No.3-School made onerous effort and granted the benefit of recommendations of 7th CPC to the petitioners, I find that the further claim of petitioners for payment of interest on the arrears necessarily should not be granted.

10. With observations as aforesaid, the present application is accordingly dismissed.

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11. Since the relief sought in the present petition pertains to grant of recommendations of 7th CPC with arrears and interest, which has already been adjudicated, nothing is left for consideration by this Court.

12. The present petition is accordingly disposed of. Pending applications also stand disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

APRIL 12, 2023

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