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

% *Date of Decision: 30th May, 2023*

\+ W.P.(C) 6444/2023

SMT. JATINDER KAUR KHANDPUR ..... Petitioner
Through: Mr. Nikhilesh Kumar, Advocate

versus

DIRECTORATE OF EDUCATION AND ORS ..... Respondents
Through: Mr. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi and Ms. Manisha, Advocates for DoE.
Mr. Abinash K. Mishra, Advocate for R-2 and R-3.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

CM APPL. 25336/2023 (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. 2 & 3 to implement the speaking order dated 7.9.2022 passed by the Respondent No.1 (Annexure-P/2) and forthwith release the arrears along with interest;*

> *b) Issue a writ of mandamus, order or direction, directing the Respondent No. 2 and 3 to release the arrears towards TA in terms of 6th & 7th CPC, arrears towards DA and balance salary of 40% for June and July 2021 along with interest @ 18%;*
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> *c) Issue a writ of mandamus, order or direction, directing the Respondent No. 1 to pass speaking order within a period of 4 weeks on two issues i.e. wrong fixation of salary since from September 2001 and (ii) after 12 years of service the ACP was not given instead only a Sr. Scale was given;*
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> *d) 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. Petitioner was working as Vice Principal with Guru Harkrishan Public School/Respondent No. 3 herein (hereinafter referred to as the 'School') at the time of her retirement on superannuation on 31.07.2020. It is the case of the Petitioner that at the time of her retirement, terminal/retiral benefits were not released to the Petitioner and even the arrears of pay revision under the 6th and 7th Pay Commissions including TA and DA have not been paid.

5. Petitioner had earlier filed a writ petition being W.P.(C) No. 11837/2021 in this Court, which was disposed of vide order dated 21.10.2021, directing Respondent No.1/Directorate of Education ('DoE') to treat the petition as a representation and after taking comments from the School, dispose of the same within four weeks. Respondent No.1 considered the representation and by a speaking order dated 07.09.2022 directed the School to clear the arrears of Rs.46,34,464/- within 15 days of the issuance of the order.

6. Pursuant to the speaking order passed by the DoE, School has paid an amount of Rs. 29,70,288/- in eight equal monthly instalments of Rs.3,71,286/- each but the balance amount is still outstanding in terms of the speaking order. It is also the case of the Petitioner that over and above the amounts calculated by the DoE, some amounts are

also due towards the arrears of salary from September, 2001, ACP benefits and interest on delayed payments towards arrears of TA/DA, which total to Rs. 27,72,556/-.

7. Issue notice.

8. Counsels, as above, accept notice for the Respondents. Counsel for Respondents 2 and 3, the contesting Respondents is unable to dispute that the speaking order passed by DoE on 07.09.2022, is in consonance with the judgment of this Court in ***Shikha Sharma v. Guru Harkrishan Public School & Ors, 2021 SCC OnLine Del 5011*** and the amounts mentioned therein under different heads are payable.

9. Having heard the learned counsels for the parties, this Court finds merit in the contention of the Petitioner 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."

10. Additionally, it needs to be noted that pursuant to the order passed by this Court on 21.10.2021 in W.P.(C) 11837/2021, DoE has considered the representation of the Petitioner and directed the School to release an amount of Rs.46,34,464/- to the Petitioner, relying on the judgments in ***Shikha Sharma (supra)*** and ***Kuttamparampath Sudha Nair v. Managing Committee Sri Sathya Sai Vidya Vihar and Another, 2021 SCC OnLine Del 2511***, amongst other judgments. From the order, it is apparent that DoE has held the Petitioner entitled to arrears of pay revision under the 7th CPC, retirement Gratuity at the revised rate up to Rs.20 lacs which is the maximum limit and Leave Encashment totalling Rs.46,34,464/-. It is recorded in the order that Petitioner has been paid the entire arrears under the 6th CPC. Therefore, there is no impediment in the way of the Petitioner to receive the balance amount of Rs.16,64,176/-, as admittedly she has received only a sum of Rs.29,70,288/- pursuant to the speaking order.

11. Petitioner has laid an additional claim towards alleged wrong fixation of salary since September, 2001 and/or ACP benefits and TA, DA. Although no details have been given in the writ petition to establish these claims, however, it is left open to the Petitioner to make a comprehensive representation to the School with respect to the said claims and in case the representation is so made, the same shall be considered by the School in accordance with law and a reasoned and speaking order shall be passed thereon, within 6 weeks from the date of receipt of the representation. Petitioner will be at liberty to take recourse to legal remedies in case of any grievance thereafter.

12. Writ petition stands disposed of with a direction to the School to pay the balance amount in terms of the speaking order to the

Petitioner within eight weeks from today. In case of failure to release the amount due within the timeframe granted by the Court, school shall incur the liability of interest at the rate of 6% p.a. from the date the amount become due till actual payment.

JYOTI SINGH, J

MAY 30, 2023/shivam