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

% *Date of Decision: 2nd June, 2023*

+ W.P.(C) 6521/2021

ANCHLA AND ORS

..... Petitioners

Through: Mr. Anmol Panwar, Mr. Hemant Baisla, Mr. Ankit Singh and Mr. Shubham Tomar, Advocates

versus

GREENFIELDS PUBLIC SCHOOL AND ANR

..... Respondents

Through: Mr. Kamal Gupta, Mr. Sparsh Aggarwal and Ms. Paridhi Bist, Advocates for R-1.

Mr. Gaurav Dhingra, Advocate for R-2.

Mr. Sujeet Kumar Mishra, Mr. Anil Kumar and Mr. Kartiik Kumar, Advocates also for R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioners seeking the following reliefs:-

“a. Issue appropriate writ/order/directions in the nature of mandamus directing the Respondent No 1 & 2 to act in accordance with and not in contravention of the Delhi School Education Act & Rules 1973.

b. Issue appropriate writ/order/directions in the nature of mandamus directing Respondent No. 1 to implement the CPC recommendations and provide consequential benefits to the Petitioners, including various allowances and provision of other service benefits as extended through the MACP resolutions/schemes passed by the Government of India.

c. Issue appropriate writ/order/directions in the nature of mandamus directing the Respondent No. 1 in its entirety to release the amount of arrears along with interest which has not been paid



to Petitioners No. 1-4 & 6-15 for which they are entitled to, under the MACP Scheme passed by the Government of India;

d. Issue appropriate writ/order/directions in the nature of mandamus directing the Respondent No. 2 to ensure the implementation of 7th CPC and MACP by the Respondent No. 1 and provide consequential benefits to the Petitioners.

e. Issue appropriate writ/order/directions in the nature of mandamus commanding the Respondents to pay the costs of this Petition to the Petitioners.

f. Pass such other order/s as may be deemed fit and proper in the facts of the present case.”

2. Petitioners are serving/retired employees of Greenfields Public School/Respondent No.1 herein (hereinafter referred to as ‘the School’) and were appointed as PGT/TGTs/Assistant Teachers/Lab Assistants/PRT respectively and through the present writ petition seek benefits of pay revision under 7th CPC along with consequential benefits as also financial upgradation(s) under the Modified Assured Progression Scheme (‘MACP’), introduced by Government of India vide DoPT O.M. dated 19.05.2009, pursuant to the recommendations of 6th CPC. Respective dates of appointments and other necessary details of the Petitioners are given hereunder in a tabular form:-

<i>PETITIONERS</i>	<i>DATE OF APPOINTMENT</i>	<i>DESIGNATION</i>
<i>Petitioner No. 1/ Ms. Anchla</i>	<i>01.08.1986</i>	<i>TGT (Natural Science)</i>
<i>Petitioner No. 2/ Mr. Ramesh Chandra</i>	<i>19.11.1994</i>	<i>Lab Assistant</i>
<i>Petitioner No. 3/ Mr. Satyendra Prakash Dixit</i>	<i>11.07.1990</i>	<i>TGT (Maths & Physics) (promoted as PGT (Physics) on 01.08.1998 and retired on 30.11.2018)</i>



<i>Petitioner No. 4/ Mr. Akhtar Ali</i>	<i>15.09.1983</i>	<i>Lab Assistant (retired on 31.08.2018)</i>
<i>Petitioner No. 5/ Ms. Sarita Mathur</i>	<i>01.08.1985</i>	<i>TGT (Science) (retired in July, 2016)</i>
<i>Petitioner No. 6/ Ms. Alka S. Kapre</i>	<i>05.07.1985</i>	<i>Assistant Teacher (later appointed as TGT on 31.03.1990 and promoted as PGT in 1998 and retired on 30.09.2017)</i>
<i>Petitioner No. 7/ Ms. Saroj Arora</i>	<i>04.07.1986</i>	<i>TGT (retired on 30.04.2019)</i>
<i>Petitioner No. 8/ Ms. Sangeeta Saini</i>	<i>20.07.1982</i>	<i>Assistant Teacher (promoted as TGT on 01.07.2014 and retired on 31.08.2021)</i>
<i>Petitioner No. 9/ Ms. Meena Kalia</i>	<i>06.08.1987</i>	<i>TGT (retired on 30.09.2021)</i>
<i>Petitioner No. 10/ Ms. Shobha Singh</i>	<i>21.07.1987</i>	<i>TGT (appointed as PGT (English) on 01.07.1989 and retired on 31.03.2019)</i>
<i>Petitioner No. 11/ Mr. Pulkit Sinha</i>	<i>02.09.1985</i>	<i>TGT (promoted as PGT (English) on 01.04.2008 and retired on 30.08.2021)</i>
<i>Petitioner No. 12/ Ms. Saroj Arora</i>	<i>05.07.1980</i>	<i>Assistant Teacher (promoted as TGT on 04.07.1986 and retired on 31.01.2018)</i>
<i>Petitioner No. 13/ Mr. Beryl Sewak</i>	<i>02.09.1985</i>	<i>Nursery/Teacher Assistant</i>



		(retired on 31.01.2020)
Petitioner No. 14/ Ms. Rekha Chopra	01.07.2002	PGT (Chemistry) (retired on 30.06.2017)
Petitioner No. 15/ Ms. Bharti Kumar	01.07.1982	PRT (English) (promoted as TGT (English) on 01.07.1987 and retired on 31.01.2020)

3. It is submitted on behalf of the Petitioners that 7th CPC, set up by the Government of India vide Resolution dated 28.02.2014, gave its recommendations for revision of emoluments including pay, allowances, etc. of Central Government Civilian Employees, which were notified vide Gazette Notification by Ministry of Finance on 25.07.2016. Pursuant to these recommendations, Central Civil Services (Revised Pay) Rules, 2016 (hereinafter referred to as 'Pay Rules') were notified incorporating the revised pay matrix and Directorate of Education/Respondent No.2 (hereinafter referred to as 'DoE') adopted the Pay Rules and thereafter in exercise of powers conferred under Rule 50 of the Delhi School Education Rules, 1973 (hereinafter referred to as 'Rules 1973') directed the Managing Committee of the School to implement the Pay Rules and revise the pay of its regular employees at par with pay structure of regular employees of corresponding status in the Government schools.

4. It is the contention of learned counsel for the Petitioners that grant of benefits of pay revision under the 7th CPC to the Petitioners is a statutory obligation of the School by virtue of provision of Section 10(1) of the Delhi School Education Act, 1973 (hereinafter referred to as '1973 Act'), which provides that scales of pay and allowances,



medical facilities, pension, gratuity, etc. and other prescribed benefits of employees of a recognized private school shall not be less than those of the employees of corresponding status in schools run by the appropriate authority. It is urged that the issue whether the employees of a recognized private school are entitled to benefits of Central Pay Commissions' recommendations by virtue of Section 10(1) of 1973 Act is no longer *res integra* and relies on the following judgments:-

- a. *Mrs. Omita Mago & Ors. v. Ahlcon Public School & Anr., W.P.(C) 4979/2021, decided on 24.03.2022;***
- b. *Shikha Sharma v. Guru Harkrishan Public School & Ors, 2021 SCC OnLine Del 5011;***
- c. *Amrita Pritam and Others v. S.S. Mota Singh Junior Model School and Others, 2021 SCC OnLine Del 4470;***
- d. *Kuttamparampath Sudha Nair v. Managing Committee Sri Sathya Sai Vidya Vihar and Another, 2021 SCC OnLine Del 2511.***

5. It is further submitted that DoE has issued circulars from time to time including an order dated 25.08.2017, in exercise of powers conferred under Sections 17(3), 18(4) and (5) as well as 24(3) of 1973 Act and Rules 50, 51, 177 and 180 of Rules 1973, directing the Managing Committees of all private unaided recognized schools to implement the Pay Rules, but there is total inaction on the part of the School herein. The defence taken by the School for non-implementation of 7th CPC recommendations that there is paucity of funds or that increase in fee collected from students is a pre-condition for pay revision of the teachers and other employees, is both factually and legally flawed. There is no paucity or dearth of funds in the School and secondly, this Court in several judgments has negated the contention of the Schools that financial crunch for any reason



including constraints imposed by DoE to hike the fee, which is a source of revenue, can be a ground to deny benefits of pay revisions.

6. The next and the only other contention on behalf of the Petitioners is that they have been deprived of financial upgradations under the MACP Scheme, which envisages placement in the immediate next higher grade pay in the hierarchy of revised Pay Bands and Grade Pay on completion of 10, 20 and 30 years of regular service in the same post, without promotion. Attention of the Court is drawn to a tabular representation in para 7 of the writ petition reflecting the status of MACP benefits paid/due to the Petitioners wherever applicable. It is submitted that there can be no dispute that the Division Bench of this Court in *Manju Sipayya v. Directorate of Education and Others, 2019 SCC OnLine Del 10867* has held that private unaided institutions have maximum autonomy in administration of their institutions and going by the MACP Scheme such institutions are not bound to adopt the Scheme, however, having adopted the Scheme and granted benefits of the Scheme to most of the employees including 1st MACP to some of the Petitioners, it is not open to the School to now take a position that it is not bound to implement the Scheme and that the earlier decision to adopt the Scheme has been recalled.

7. It is argued that the objection taken by the School in the affidavit filed in response to the writ petition to its maintainability on ground of delay and laches is misconceived. The Supreme Court in *Keraleeya Samajam and Another v. Pratibha Dattatray Kulkarni (Dead) Through Lrs and Others, 2021 SCC OnLine SC 853*, has held that revision of pay structure under the recommendations of Pay



Commissions is the statutory obligation of the employer and there can be no limitation or delay since an employee is not required to run for the said benefits.

8. Mr. Dhingra, learned counsel appearing on behalf of DoE supports the case of the Petitioners and submits that DoE had issued a circular dated 25.08.2017 directing the Managing Committees of all private unaided recognized schools to implement the Pay Rules for their regular employees and grant pay revision under 7th CPC w.e.f. 01.01.2016 and the School cannot wriggle out of its statutory obligation under Section 10(1) of 1973 Act to place the Petitioners at par with their counterparts in Government schools, where pay has been revised. It is further submitted that School cannot raise the defence of alleged paucity of funds or link the issue of fee hike with the payment of revised pay under 7th CPC, as both issues are independent of each other. Reliance is placed on the judgments in *Kuttamparampath Sudha Nair (supra)* and *Shikha Sharma (supra)* to argue that Courts have repeatedly rejected the plea of paucity of funds/financial hardship set up by the Schools to justify non-compliance of the statutory mandate under Section 10(1) of 1973 Act.

9. As for grant of MACP benefits, it is submitted by Mr. Dhingra that in view of the judgment in *Manju Sipayya (supra)*, no orders were passed by DoE binding the recognized unaided private schools to adopt MACP Scheme and it was left to their discretion to adopt or not. However, DoE has issued an order dated 25.10.2022, wherein it is clarified that while DoE has not imposed any restriction on unaided schools to extend the benefit of MACP Scheme to their employees and it is for them to volunteer, but where the Schools have implemented



the Scheme, they cannot deny the same to any of their employee on a pick and choose policy.

10. Mr. Dhingra also submits that DoE has taken all necessary initiatives on receipt of the representation from the Petitioners and conducted an inquiry into the affairs of the School. Finding that the School has violated the mandate of law, a show-cause notice was issued on 14.01.2021 to explain the reason for not complying with the order of DoE passed on 18.04.2020 and paying salaries in terms of Section 10(1) of 1973 Act. In the reply filed by the School the prime defence was the extraordinary situation created by Pandemic Covid-19 and non-payment of arrears of fees by the parents. Once again, DoE directed the School to comply with the directions vide its order dated 08.08.2022, as the reply was unsatisfactory.

11. Mr. Kamal Gupta, learned counsel appearing on behalf of the School opposes the writ petition on multiple grounds. The first and foremost contention is that the writ petition is grossly barred by delay and laches as most of the Petitioners retired in or prior to the year 2018 and the writ petition is filed in 2021 i.e. after a delay of over 3 years from the respective dates of retirements and 6 years from the 7th CPC recommendations and deserves to be dismissed on this ground alone. Even assuming that the writ petition can be entertained, at the highest Petitioners will be entitled to arrears restricted to 3 years prior to the filing of the writ petition and not from 01.01.2016. To support this proposition, reliance is placed on the judgments of the Supreme Court in *Union of India and Others v. Tarsem Singh*, (2008) 8 SCC 648; *State of Orissa and Another v. Mamata Mohanty*, (2011) 3 SCC 436 and of this Court in *Standing Conference of Public Enterprises*



v. BSES Rajdhani Power Limited & Ors., 2013 SCC OnLine Del 224; Avinash Sharma v. Tata Power Delhi Distribution Ltd., 2021 SCC OnLine Del 4904 and Kirti Jain v. Kulachi Hansraj Model School & Others, 2018 SCC OnLine Del 13221.

12. The next contention on behalf of the School is that no rights can exist in isolation and even fundamental rights are subject to reasonable restrictions. Rights of private unaided schools to determine the fees payable by students as well as the pay structure of their employees and the establishment expenses, are fundamental rights recognized by the eleven-Judge Bench of the Supreme Court in ***T.M.A. Pai Foundation and Others v. State of Karnataka and Others, (2002) 8 SCC 481***. Direct linkage between the rights of teachers, emanating from Section 10 of the 1973 Act, with the rights of the School to fix the fees commensurate with the expenses which includes the right to pay the salaries/allowances in accordance with Pay Commissions' recommendations, has been given a statutory recognition under Sections 17 and 18 of 1973 Act and Rule 177 of Rules 1973. This linkage and inter-dependence is also recognized by DoE itself in the circulars issued from time to time, especially circulars dated 06.01.2017, 27.03.2017 and 17.10.2017. This proposition, it is urged, stands well accepted by the Supreme Court in ***Modern Dental College and Research Centre and Others v. State of Madhya Pradesh and Others, (2016) 7 SCC 353*** and by this Court in ***Action Committee v. Directorate of Education and Another, 2019 SCC OnLine Del 7591***. A Division Bench of this Court accepted and affirmed the correlation between the rights of the Schools to charge fee and those of teachers to receive salaries in W.P.(C) 5446/2018 titled ***Social Jurist, A Civil***



Rights Group v. Government of NCT of Delhi and Ors., decided on 20.11.2019. For this proposition, reliance is also placed on another judgment of the Division Bench of this Court in ***Naresh Kumar v. Director of Education and Another, 2020 SCC OnLine Del 1775.***

13. It is strenuously contended by Mr. Gupta that the only source of revenue and income of private unaided schools is the fee received from the students. There is a phenomenal increase in the pay-structure of employees on account of 7th CPC and in the absence of the School being permitted to hike the fee, which issue is pending consideration, it is not in a position to meet the liability of pay revision under 7th CPC. School has challenged the DoE order dated 07.02.2019, laying restrictions on fee hike for the Academic Session 2017-18 in W.P.(C) 5873/2019 and vide order dated 24.05.2019, this Court has stayed any coercive action against the School. This order was subsequently made absolute on 19.09.2019. The direction of 'no coercive action' would mean and connote that no coercive action would be taken even where the School does not revise the pay under 7th CPC.

14. Referring to interim orders of Co-ordinate Benches of this Court, Mr. Gupta submits that in W.P.(C) 1635/2020 titled ***Rambir Singh Malik & Ors. v. Greenfield Public School and Ors.***, this Court after hearing the parties, has directed payment of only 25% arrears to the Petitioners therein. It is also submitted that in W.P.(C) 14380/2022 titled ***St. Margaret Sr. Sec. School v. Directorate of Education***, the Court first restrained DoE from taking coercive action and subsequently the direction of DoE to implement 7th CPC under threat of de-recognition was also stayed. All these interim orders, it is submitted, will stand overruled and/or ignored, if any direction is



passed by this Court for payment of arrears in the present writ petition and therefore the right of the School to charge fee commensurate with its expenses including revision of pay, etc. must be given due value and credence, being a fundamental right.

15. It is argued that School is facing a financial crunch and cannot be compelled to revise the pay of the Petitioners and it is wrong for the Petitioners and DoE to urge that paucity of funds/financial hardship in a given case, if genuine, cannot be a valid defence to non-implementation of 7th CPC recommendations. Reliance by the Petitioners/DoE on the judgment of the Supreme Court in *Keraleeya Samajam (supra)* cannot aid them since the judgment did not refer to earlier decisions of the Supreme Court rendered by Benches of equal or larger strength on the issue and is thus *per incuriam*.

16. As for financial upgradations under the MACP Scheme, it is contended that claims of the Petitioners are untenable in law being contrary to the judgment in *Manju Sipayya (supra)*, where the Division Bench has held that private unaided schools cannot be forced to adopt the MACP Scheme and SLP(C) No.5361-5362/2020 against the said judgement was dismissed by the Supreme Court on 08.11.2021. Therefore, Petitioners cannot claim MACP benefits as a matter of right as it is the discretion of the School to adopt the Scheme. Mr. Gupta pointedly submits that contrary to the stand of the Petitioners, School has not paid MACP to even a single member of the staff and School has taken this position in writing in para 13 of the brief note dated 31.05.2023. It is also urged that the DoE itself, after elaborate hearing, has passed a detailed order dated 02.12.2014 in the case of Summer Fields School, Kailash Colony stating that MACP



Scheme cannot be imposed on private unaided schools. Therefore, there is no discrimination against the Petitioners and in fact, none is pleaded in the writ petition.

17. I have heard the learned counsels for the parties and examined their respective contentions.

18. The neat legal nodus that arises in this writ petition is whether Petitioners are entitled to the benefits of pay revision under 7th CPC, including arrears thereof. This issue, in my view, as rightly contended by the Petitioners, is no longer *res integra*. This Court in ***Kuttamparampath Sudha Nair (supra)***, has examined the vexed question of applicability of Section 10(1) of DSEA&R to private recognized unaided schools and relevant paras of the judgment are as under:

“20. The issue of applicability of Section 10(1) and other provisions of Chapter IV of the DSEA&R to unaided minority schools came up for consideration before the Supreme Court in Frank Anthony (supra) and the Supreme Court set aside the pre-existing Section 12, which had excluded the application of Section 10(1) and other provisions to the unaided minority schools. The Supreme Court also considered whether applying Section 10(1) would have the impact of eroding the minority character of the schools which entitles them to a Constitutional protection under Article 30(1) and held that it did not. The Supreme Court had observed that excellence of every school, aided or unaided, would depend upon the quality of its teachers and therefore, provisions like Section 10(1) mandating payment of salary and allowances cannot be characterized as unreasonable even in respect unaided minority institutions.

21. The judgment was followed in several cases and was also relied upon by the eleven-Judge Bench of the Supreme Court in T.M.A. Pai (supra). Relevant paras of the judgment in Frank Anthony (supra) are as follows:—

“20. Thus, Sections 8(1), 8(3), 8(4) and 8(5) do not encroach upon any right of minorities to administer their educational institutions. Section 8(2), however, must, in view of the authorities, be held to interfere with such right and, therefore, inapplicable to minority institutions. Section 9 is again



innocuous since Section 14 which applies to unaided minority schools is virtually on the same lines as Section 9. We have already considered Section 11 while dealing with Section 8(3). We must, therefore, hold that Section 12 which makes the provisions of Chapter IV inapplicable to unaided minority schools is discriminatory not only because it makes Section 10 inapplicable to minority institutions, but also because it makes sections 8(1), 8(3), 8(4), 8(5), 9 and 11 inapplicable to unaided minority institutions. That the Parliament did not understand Sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article 30(1) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article 30(1) is the price which the aided minority institutions have to pay to obtain aid from the government.”

21. The result of our discussion is that Section 12 of the Delhi School Education Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void except to the extent that it makes Section 8(2) inapplicable to unaided minority institutions. We, therefore, grant a declaration to that effect and direct the Union of India and the Delhi Administration and its officers, to enforce the provisions of Chapter IV [except Section 8(2)] in the manner provided in the chapter in the case of the Frank Anthony Public School. The management of the school is directed not to give effect to the orders of suspension passed against the members of the staff.

23. We must refer to the submissions of Mr. Frank Anthony regarding the excellence of the institution and the fear that the institution may have to close down if they have to pay higher scales of salary and allowances to the members of the staff. As we said earlier the excellence of the institution is largely dependent on the excellence of the teachers and it is no answer to the demand of the teachers for higher salaries to say that in view of the high reputation enjoyed by the institution for its excellence, it is unnecessary to seek to apply provisions like Section 10 of the Delhi School Education Act to the Frank Anthony Public School. On the other hand, we should think that the very contribution made by the teachers to earn for the institution the high reputation that it enjoys should spur the management to adopt at least the same scales of pay as the other institutions to which Section 10 applies. Regarding the fear expressed by Shri Frank Anthony that the institution may have to close down we can only hope that the management will do nothing to the nose to spite the face, merely to “put the



teachers in their proper place". The fear expressed by the management here has the same ring as the fear expressed invariably by the management of every industry that disastrous results would follow which may even lead to the closing down of the industry if wage scales are revised."

22. *Relevant paras of the judgment in T.M.A. Pai (supra) are as follows:—*

"124. In Lily Kurian v. Sr. Lewina [(1979) 2 SCC 124 : (1979) 1 SCR 820] this Court struck down the power of the Vice-Chancellor to veto the decision of the management to impose a penalty on a teacher. It was held that the power of the Vice-Chancellor, while hearing an appeal against the imposition of the penalty, was uncanalized and unguided. In Christian Medical College Hospital Employees' Union v. Christian Medical College Vellore Assn. (1987) 4 SCC 691 this Court upheld the application of industrial law to minority colleges, and it was held that providing a remedy against unfair dismissals would not infringe Article 30. In Gandhi Faiz-e-am College v. University of Agra (1975) 2 SCC 283 a law which sought to regulate the working of minority institutions by providing that a broad-based management committee could be reconstituted by including therein the Principal and the seniormost teacher, was valid and not violative of the right under Article 30(1) of the Constitution. In All Saints High School v. Govt. of A.P. (1980) 2 SCC 478 a regulation providing that no teacher would be dismissed, removed or reduced in rank, or terminated otherwise except with the prior approval of the competent authority, was held to be invalid, as it sought to confer an unqualified power upon the competent authority. In Frank Anthony Public School Employees' Assn. v. Union of India (1986) 4 SCC 707 the regulation providing for prior approval for dismissal was held to be invalid, while the provision for an appeal against the order of dismissal by an employee to a tribunal was upheld. The regulation requiring prior approval before suspending an employee was held to be valid, but the provision, which exempted unaided minority schools from the regulation that equated the pay and other benefits of employees of recognized schools with those in schools run by the authority, was held to be invalid and violative of the equality clause. It was held by this Court that the regulations regarding pay and allowances for teachers and staff would not violate Article 30."

(emphasis supplied)

23. *The issue again came up before the Supreme Court in Raj Soni v. Air Officer Incharge (Administration), (1990) 3 SCC 261 where the Supreme Court reiterated and re-affirmed the inflexible*



nature of the liability that was binding on a recognized school under the provisions of the DSEA&R and significant would it be to note that the Supreme Court categorically held that recognized private schools in Delhi, whether aided or otherwise, are governed by the provisions of DSEA&R. Relevant para of the judgment is as under:—

“11. The recognized private schools in Delhi whether aided or otherwise are governed by the provisions of the Act and the Rules. The respondent-management is under a statutory obligation to uniformly apply the provisions of the Act and the Rules to the teachers employed in the school. When an authority is required to act in a particular manner under a statute it has no option but to follow the statute. The authority cannot defy the statute on the pretext that it is neither a State nor an “authority” under Article 12 of the Constitution of India.”

24. In P.M. Lalitha Lekha v. Lt. Governor in W.P. (C) No. 5435/2008 decided on 02.02.2011 although the question involved was counting of service of the Petitioner therein for computing her pension and in that context was different on facts, but the point of law was the same as the one arising in the present petition. Co-ordinate Bench of this Court examined the provisions of Section 10(1) of the DSEA&R and observed that the first proviso to Section 10(1) clearly obliges the DOE to direct the management of all recognized private schools to bring all benefits, including inter-alia pensionary benefits, to the same level as that of the employees of corresponding status of the schools run by the Director of Education. The second proviso enables the DOE to withdraw the recognition of the school under Section 4 of the DSEA&R in case the management fails to comply with the directions and serves a salutary purpose and empowers the DOE to issue directions aimed at fulfilling the object of Section 10(1) of the DSEA&R. It was also held that the mandate of Section 10(1) is unambiguous, regardless of whether the school receives grant-in-aid or not. It was also held that it must be kept in mind that the Delhi School Education Act contemplates unaided private schools also, as they are also granted recognition and therefore the mandate of Section 10(1) would apply to them with full rigour. Relevant paras of the judgment are as under:—

“11. The first proviso to Section 10 of the Delhi School Education Act, 1973 clearly obliges the Director of Education to direct the management of all recognized private schools to rectify any deficiency and to bring all benefits, including, inter alia, pensionary benefits up to the same level as those of employees of corresponding status of the schools run by the Director of Education. The second proviso further provides that in case the management of the school fails to comply with such directions, recognition of the school can be withdrawn under the



powers given in S.4 of the Delhi School Education Act, 1973. This serves a salutary purpose and further empowers the Director of Education to issue appropriate directions aimed at fulfilling the object of Section 10(1) of the Act.

12. The school has been given certain privileges, including recognition, on condition, *inter alia*, that it complies with Section 10(1). Due to the non-compliance of the conditions by the respondent school the petitioner cannot be made to suffer. If the respondent school does not come forward to honor its employees' entitlement in this behalf, then, steps need to be taken by the appropriate authority to ensure compliance.

13. The payment of pension for the period before the grant-in-aid came into the picture has to be rendered by the school, but post such grant, the liability shifts to the respondent. This is because the mandate of Section 10(1) is unambiguous. Regardless of whether it receives grant-in-aid or not. So long as it is a recognized private school, pension and other benefits of its employees must be the same as those admissible to employees of the Authority's schools. Under the first proviso, it is the respondent's duty to ensure that such payment is made. Under the Second proviso the respondent can take action if those directions are not followed. The respondents in no circumstance can be absolved from their duty.

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15. In this context, it must be kept in mind that the Delhi School Education Act contemplates unaided private schools also. Even such schools are granted recognition. The mandate of Section 10(1) applies with full rigour to them also."

(emphasis supplied)

25. Recently, a Division Bench of this Court in *Dhanwant Kaur Butalia v. Guru Nank Public School* in LPA 499/2013 decided on 14.01.2016 reiterated and re-enforced that Section 10(1) with its consequential resultant mandate that scales of pay, allowances, medical facilities, gratuity, etc., paid to the Government schools should be paid to employees of corresponding status in private recognized schools, would apply to all unaided schools. Section 10(1) is a statutory purity and also a minimum standard which all recognized schools have to adhere to.

26. In the appeal before the Division Bench, the Appellant was aggrieved by an order of the learned Single Judge whereby her claim for increase of salary, consequent to implementation of 6th CPC recommendation, was rejected. The Appellant invoked provisions of Section 10(1) of DSEA&R and also relied on earlier judgments of this Court wherein it was consistently ruled that unaided schools have an obligation to ensure that emoluments of



teachers and other employees are at par with those in the schools established and maintained by the appropriate Government. Judgments of this Court in Gurvinder Singh Saini v. Guru Harkishan Public School in W.P. (C) 12372/2009 decided on 02.09.2011, Deepika Jain v. Rukmini Devi Public School in W.P.(C) 237/2013 decided on 23.09.2013 and the judgment of Division Bench in Guru Harkishan Public School v. Gurvinder Singh Saini in LPA 58/2012 decided on 05.09.2012, were cited by the Appellant and taken note of by the Division Bench.

27. *As the issue before the Division Bench concerned benefits under 6th CPC, reliance was placed on the CCS (Revised Pay) Rules, 2008 and Office Memorandum dated 30.08.2008 referring to the said Rules. Based on this, a Circular was issued by the Competent Authority under the DOE on 15.10.2008, directing the managements of all private recognized (aided as well as unaided) schools to implement 6th CPC recommendations. After a conjoint reading of the circulars and the Pay Rules, the Division Bench held as follows:—*

“6. The Court also notices that the pre-existing Section 12 which had excluded the application of Section 10 and other provisions of the Chapter, to unaided minority schools was set aside by the Supreme Court in Frank Anthony School Employees Association v. Union of India (1986) 4 SCC 707 : AIR 1987 SC 311. The Supreme Court expressly considered the impact of Section 10 and whether it had the effect of eroding the minority character of schools entitled to protection under Article 30 and concluded that it did not. The said judgment has been constantly followed and it was not overruled but was approved in TMA Pai Foundation's case (supra). Section 10 with its consequential resultant mandate is that scales of pay, allowances, medical facilities, gratuity, provident fund “and other prescribed benefits” which employees of “corresponding status” in schools of the appropriate government are to be granted to employees of all unaided schools.

7. This ipso facto ought to clinch the case in favour of the present appellant. Section 10 is a statutory purity and also a minimum standard which all recognized schools have to adhere to.

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10. The said office memorandum of 30.08.2008 also referred to the Central Civil Service Revised Pay Rules, 2008. The effect of all these office memoranda (dated 11.09.2008, 22.09.2008 and 15.10.2008) is that the managements of all private recognized schools aided as well as unaided had to implement the 6PC Recommendations, in the manner stipulated by Section 10 of Delhi Education Act. Circular dated 15.10.2008 was categorical



in this regard. It reads as under:

“Section 10(1) of Delhi School Education Act 1973 provides that:

“The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized private school shall not be less than those of the employees of the corresponding status in school run by the appropriate authority.”

Therefore, the Management of all private recognized, (Aided as well as unaided) schools are directed to implement the Sixth Pay Commission recommendations - fixation of pay and payment of arrears in accordance with circular no. 30-3(17)/Cood/Cir/2008 dated 22.09.2008 vide which it has been implemented in r/o employees of Government Schools.

This issue with prior approval of competent Authority.”

11. A co-joint reading of all circulars would immediately reveal that the 6PC recommendations were accepted and the Central Government formulated the revised pay rules with effect from 01.01.2006. The rules were published in 2008. Nevertheless, the entitlement following from it accrued to all with effect from 01.01.2006. The only exception was that certain types of allowances i.e. HRA, children's education allowance, special compensatory allowance etc. were to be paid prospectively with effect from 01.09.2008 (refer para 3 of OM dated 30.08.2008). In all other respects, the pay parity mandated for government of NCT teachers was to apply to teachers and staff members of unaided schools - minority and non-minority schools.

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13. In the present case, Section 10 remains on the statute book; it was declared to be applicable to all unaided schools including minority schools, from 1986 onwards i.e. with the declaration of the law in Frank Anthony School Employees Association's case (supra). There is no dispute that the 6PC recommendations were to be implemented from the date the Government of NCT implemented it. Such being the case, the respondent school in the present case could not have claimed ignorance of application of Section 10 and stated that it was obliged to pay arrears or implement the 6PC recommendations with effect from the date later than that applicable in the case of Government of NCT teachers and teaching staff in its schools.

14. As a consequence and in the light of the previous order of this court in Gurvinder Singh Saini's case (supra) and Uma Walia's case (supra) the impugned order and judgment of learned Single Judge is hereby set aside. The respondent is



directed to disburse all the arrears of salary and allowances payable pursuant to 6PC recommendations - to the appellant except those expressly denied by virtue of the Central Government's Office Memorandum dated 30.08.2008, within six weeks from today."

28. *Contention of learned counsel for the School that Section 10(1) does not specifically include unaided private schools may seem attractive at the first blush, if one was to superficially look at the provisions of the Section, where the words used are 'recognized private school'. However, the contention cannot be accepted in view of the various judicial pronouncements where the provision of Section 10(1) has been interpreted to include both aided and unaided schools. The Division Bench in Dhanwant Kaur (supra) has clearly held that the mandate of Section 10(1) would apply to all unaided schools as the minimum standard that the provision ensures must be adhered to by all recognized schools.*

29. *In Dev Dutt Sharma v. Managing Society National Public School in W.P. (C) 11563/2009 decided on 02.07.2010, a Co-ordinate Bench of this Court pronounced that the mandate of Section 10(1) is unambiguous, regardless of whether the institution receives grant-in-aid or not. Since the Act itself contemplates unaided private schools for recognition, mandate will apply with full rigour to them. The Supreme Court in Frank Anthony (supra) held that impact of Section 10(1) would not have the effect of eroding the minority character of the Minority Institutions, who are entitled to protection under Article 30(1) of the Constitution of India.*

30. *Additionally, it may be noted that this is also the understanding of the DOE which is implicit in the various Circulars issued by them from time to time in this regard. Vide order dated 19.08.2016, DOE, in exercise of powers conferred under Sections 17(3), 24(3) and 18 of the Delhi School Education Act, 1973 read with Rules 50, 177 and 180 of the Delhi School Education Rules, 1973 adopted the CCS (Revised Pay) Rules, 2016, under which benefits of 7th Pay Commission are paid to the Government employees. Directions were accordingly issued by the DOE, vide Circular dated 17.10.2017 to all the unaided private recognized schools to extend the benefits of 7th CPC to its employees in accordance with Section 10(1) at par with the Government employees. By another order dated 09.10.2019, the DOE reiterated its directions to the unaided schools to comply with the mandate of Section 10(1), failing which necessary action shall be taken as per provisions of DSEA&R against the defaulting Schools. Relevant paras of the order dated 17.10.2017 are as under:—*

"In continuation of this Directorate's Order No. DE.15(318)/PSB/2016/18117 dated 25/08/2017 and In exercise of the powers conferred under action 17(3) and section 24(3), of



the Delhi School Education Act, 1973 read with sub sections 3, 4 and 5 of Section 18 of the Delhi School Education Act, 1973 and with rules 50, 177 and 180 of the Delhi School Education Rules, 1973 and in continuation of the previous orders No.DE. 15/Act/Duggal. Com/203/99/23039-23988 dated 15.12.1999, F.DE 15/Act/2K/243/KKK/883-1982 dated 10.02.2005, E.15/Act/2006/738-798 dated 02.02.2006, relevant paras of F.DE/15 (56)/Act/2009/778 dated 11.02.2009, F.DE-15/ACT-I/WPC-4109/13/6750 dated 19.02.2016, F.DE-15/ACT-I/WPC-4109/PART/13/7905-7913 dated 16.04.2016 & F.DE/PSB/2017/16604 dated 03/07/2017, I, Saumya Gupta, Director of Education, hereby issue following directions to all the Unaided Private Recognized Schools in the National Capital Territory of Delhi for the implementation of 7th Central Pay Commission's Recommendations under Central Civil Services (Revised Pay) Rules, 2016 with effect from 01.01.2016.

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2. Period of Implementation of 7th CPC

The benefits of 7th Central Pay Commission Recommendations have been implemented by the Govt. of India, Department of Expenditure, Implementation Cell, Ministry of Finance in a staggered manner. As per the notification dated 25/07/2016 issued by Govt. of India, Ministry of Finance, basic pay of the Govt. employee has been increased for the period 01/01/2016 to 30/06/2017 and increased allowances have been allowed to the Govt. employees w.e.f. 01/07/2017. Thus, in accordance with sub-section (1) of Section 10 of Delhi School Education Act, 1973, the benefits of the recommendations of 7th CPC to the employees of Private Unaided Recognized Schools of Delhi will also be extended in a similar manner."

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33. The Court notes that the DOE has consistently taken a stand that the private recognized unaided schools are bound to comply with provisions of Section 10(1) and this is discernible from Circular dated 15.10.2008 issued by the DOE after the CCS (Revised Pay) Rules, 2008 were notified, pursuant to 6th CPC. The Circular was taken note of by the Division Bench in Dhanwant Kaur (supra) and is extracted in the earlier part of the judgement. This obviates any doubt that provisions of Section 10(1) of the DSEA&R shall apply to the Respondent/School and it is under a statutory obligation to pay the revised salaries and emoluments under 7th CPC to the Petitioners, in accordance with the various DOE circulars and orders referred and alluded to above.

34. In any event, it is not open to the School to even argue that the provisions of Section 10(1) of the DSEA&R would not apply to



the Petitioners as it was clearly mentioned in the appointment letters that Terms and Conditions of appointment would be governed by the DSEA&R. While incorporating this stipulation in Clause 3 of the appointment letters, the School did not carve out any exception or caveat that provisions of Section 10(1) will not apply to the teachers. Clause 3 of the respective appointment letters reads as under:—

“The terms and conditions of appointment are to be governed by the Delhi School Education Act & Rules, 1973.””

19. The issue again arose for consideration before this Court in **Shikha Sharma (supra)** and the Court held 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.”

20. From a reading of the aforementioned judgments, this Court cannot but agree with the contention of the Petitioners that their case is covered on all four corners by the judgments and they are entitled to pay revision under the 7th CPC, in consonance with CCS (Revised Pay) Rules, 2016 by virtue of provision of Section 10(1) of 1973 Act. No distinction exists or has been pointed out on behalf of the School which leads this Court to a conclusion that the Petitioners herein are not similarly placed as the Petitioners in the aforementioned two judgments and therefore no discrimination can be meted out to them as that would amount to violation of Article 14 of the Constitution of India.



21. Coming to the argument raised on behalf of the School that on account of the financial hardship, School will be unable to bear the burden of disbursing the revised salaries and emoluments, more particularly the arrears, suffice would it be to note that this argument stands negated and rejected by this Court in the aforementioned two judgments. Relevant paras of the judgment in **Kuttamparampath Sudha Nair (supra)** are as follows:

“35. The next contention of the School, without prejudice to the earlier contention, was that the School is run by a Charitable Trust and its financial condition is weak with total number of students being less and many of them covered under the EWS/DG category. School is thus unable to bear the burden of disbursing the salaries and the emoluments as per the CCS (Revised Pay) Rules, 2016 in respect of the Government employees. Courts have repeatedly held that paucity of funds or financial crunch of an employer cannot be an answer to non-compliance of a statutory mandate. In the context of payment of minimum wages, the Supreme Court in Unichovi v. State of Kerala, AIR 1962 SC 12 and Hydro (Engineers) Private Ltd. v. Workmen (1969) 1 SCR 156 held that hardship to an employer to carry on its activity, on account of payment of minimum wages, is an irrelevant consideration for determination of minimum wages. The State assumes that every employer must be in a position to pay minimum wages before he resorts to employment. In Air Freight Ltd. v. State of Karnataka, (1999) 6 SCC 567, this solemn principle was reiterated.

36. In the context of Section 10(1) of DSEA&R, this Court had rejected the argument of paucity of funds as an irrelevant consideration in the case of Samaj Shiksha Samiti v. Delhi State Saraswati Shishu Bal Mandir Karamchari Kalyan (2002) 97 DLT 802. In this context, I may quote a few passages from the judgment in Veena Sharma (Mrs.) v. The Manager, No. 1 Air Force School Palam 2005 VII AD (Delhi) 517 as follows:—

“18. Two things clearly emerge, from the above position. The respondent school is under an obligation to comply with the provisions of Section 10. This obligation is not relieved in any manner; rather, Section 4(1) reinforces this conclusion. Further, the Director and other authorities under the Act have no power to exempt any recognized school from its liability to comply with Section 10. The reliance of the school on the implied approval by the Central Government, is in my considered opinion of no consequence. There is no dispute about the fact that the



Directorate itself has been insisting upon payment of salary and allowances in accordance with Section 10. Indeed that was the condition of recognition itself. The second issue is that financial hardship is also no consideration or ground to relieve an employer of his statutory obligation to pay what society has decreed as the minimum salary of teachers and staff, through the provisions of Section 10 of the Act.

19. The submission of learned counsel for the school that if the relief is granted and the pay scales have to be released in favour of the petitioners, a situation might arise leading to the close of the school is somewhat similar to the apprehensions voiced by the Management in Frank Anthony case (supra). The Supreme Court dealt with arguments in the following terms:—

“We must refer to the submissions of Mr. Frank Anthony regarding the excellence of the institution and the fear that the institution may have to close down if they have to pay higher scales of salary and allowances to the members of the staff. As we said earlier the excellence of the institution is largely dependent on the excellence of the teachers and it is no answer to the demand of the teachers for higher salaries to say that in view of the high reputation enjoyed by the institution for its excellence, it is unnecessary to seek to apply provisions like Section 10 of the Delhi School Education Act to the Frank Anthony Public School. On the other hand, we should think that the very contribution made by the teachers to earn for the institution the high reputation that it enjoys should spur the management to adopt at least the same scales of pay as the other institutions to which Section 10 applies. Regarding the fear expressed by Shri Frank Anthony that the institution may have to close down we can only hope tht the management will do nothing to the nose to spite the face, merely to put the teachers in their proper place. The fear expressed by the management here has the same right as the fear expressed invariably by the management of every industry that disastrous results would follow which may even lead to the closing down of the industry if wage scales are revised.

20. The submission of paucity of funds, has to be, therefore, rejected. The subjective or individual hardship of a management, that too sponsored by no less an Organization of the stature of Indian Air force, which even went to the extent of seeking to deny liability on the ground that the school caters to the children of JCOs (Junior Commissioned Officers) impliedly perhaps suggesting that the children of such employees can be taught without compliance with minimum standards imposed by law, cannot be countenanced.”



37. *In this regard, I am also fortified in my view by a judgment of a Co-ordinate Bench in Deepika Jain v. Rukmini Devi Public School W.P. (C) 237/2013 decided on 23.09.2013, where implementation of 6th CPC benefits was sought by the Petitioner and the Court held as follows:—*

“3. I have held in many cases, including the case of Meenu Thakur v. Somer Ville School W.P.(C) 8748/2010 decided on 13.2.2013 that paucity of funds is not a ground to not pay amounts as per the 6th Pay Commission Report and the order of the Director of Education dated 11.2.2009. A Division Bench of this Court in LPA 286/2010 titled as Rukmani Devi Jaipuria Public School v. Sadhna Payal decided on 11.5.2012 has also held that paucity of funds is not a ground not to make payments as per the 6th Pay Commission Report.”

38. *In view of the above, this Court cannot accept the plea of paucity of funds and financial crisis raised by the School.”*

22. School has largely predicated its case on the alleged direct link and inter-dependence of revision in pay of employees under Section 10(1) with the right of the School to revise the fee-structure under Section 17 of 1973 Act, emphasising that the fee collected from the students is the only source of revenue/income of the School. This ground, it is urged, is also a contributory factor to the already existing financial crunch and circumstances owing to the pandemic COVID-19. While the argument is no doubt ingenious, however, cannot aid the School. First and foremost, it needs to be noted factually that when a show-cause notice dated 14.01.2021 was issued to the School by DoE pertaining to non-compliance of the mandate of Section 10(1) of 1973 Act, School had denied in the reply dated 20.01.2021 that there was non-compliance of the order dated 18.04.2020, inasmuch as School had not stopped/reduced the monthly salaries and emoluments. It was also stated that there was only a delay in disbursal of salaries and this was due to the extraordinary and unimaginable situation created by the Pandemic and non-payment of fee by the parents on time, resulting in



arrears of crores of rupees. It was not the stand of the School that revision of pay under 7th CPC was interlinked to or inter-dependent on the fee hike. Be that as it may, even legally, the argument is wholly flawed. Section 17 of 1973 Act deals with 'Fees and other charges' and provides that no aided school shall levy any fee or collect any other charge or receive any other payment except those specified by the Director. This Court in the case of ***Delhi Abhibhavak Mahasangh v. Union of India & Ors., AIR 1999 Del 124***, held that DoE has ample power to regulate fee and other charges even with respect to recognized unaided schools to prevent commercialization and exploitation even though Section 17(1) and (2) are applicable to aided schools. The purpose and intent behind the provision is to regulate the fee charged by the schools so that there is no profiteering *albeit* autonomy of private unaided schools to fix their fee-structure is judicially recognized. Section 10(1) on the other hand mandates parity in pay, allowances and other medical and retiral benefits between employees of a recognized private school and their counterparts in schools run by the appropriate authority. This Court is unable to see any dependence of Section 10(1) on Section 17 of the 1973 Act, as sought to be brought forth by Mr. Gupta. Be it mentioned that to bring home this point, learned counsel has placed heavy reliance on the judgment of the Division Bench of this Court in ***Social Jurist (supra)***, wherein according to the School, the Division Bench has observed that the two provisions are interlinked with each other. Court is unable to agree with the School on this count. Reading of the judgment shows that a Public Interest Litigation was filed seeking implementation of 7th CPC recommendations for teaching and non-teaching employees of



unaided private schools of Delhi. Respondent No.5 therein was the Action Committee Unaided Recognized Private Schools and the contention raised by the said Respondent was that the obligation under Section 10 cannot be complied with unless rights of the schools enumerated under Section 17 are allowed to be availed. The Division Bench did not delve into the legal issue raised and only observed that PIL was not tenable in law because the teaching and non-teaching staff of any unaided private school can always approach this Court in their individual capacity, if aggrieved of the non-implementation of the 7th Pay Commission's recommendations. The Division Bench also observed that as and when any aggrieved individual approaches this Court, the decision can be taken in accordance with law, rules, regulations and Government policy applicable. The operative paragraphs of the judgment read as follows:-

"8. All the above-mentioned writ petitions are pending consideration in this Court. On one hand the Government of NCT of Delhi is not allowing the increase in the fee structure which is permitted by the law i.e. under the Act, 1973, and on the other hand insisting on the implementation of the 7th Pay Commission recommendations. It is further submitted by the learned senior counsel for respondent No.5 that this writ petition may not be entertained by this Court in the light of the aforementioned pending writ petitions. Moreover, teaching and non-teaching staff are capable enough to approach to the Court and hence Public Interest Litigation is not tenable in law. It is further submitted by the learned senior counsel for respondent No.5 that there are several other arguments that vest with them but as the aforesaid writ petitions are pending and the interim orders have already been passed to the effect that no coercive action shall be initiated against the unaided Private Schools, respondent No.5 is not going further into the detailed aspects of the law. Suffice it to say that this PIL is not tenable in law because the teaching and non-teaching staff of any unaided private school can always approach this Court in their individual capacity if aggrieved by the non-implementation of the 7th Pay commission recommendations.

9. Having heard the counsel for both sides and looking to the legal obligation of the schools under Section 10 of the Act, 1973 as well as the rights of the schools under Section 17 of the Act, 1973 and taking



note of the interim orders passed by this Court in several aforementioned litigations and also looking to the fact that any person who belongs to the teaching or non-teaching staff in unaided Private Schools of Delhi is always at liberty to approach this Court in individual capacity in accordance with law, we see no reason to entertain this Public Interest Litigation. As and when any aggrieved individual approaches this Court, the decision can be taken in accordance with law, rules, regulations and Government policy applicable to the facts of that case.”

23. Reliance placed on the judgment in ***Naresh Kumar (supra)***, is also misplaced. The writ petition in the said case was filed *inter alia* for a direction to DoE to direct the Schools not to charge tuition fees from the students keeping in view the Pandemic Covid-19 at least for the lockdown period in the interest of justice. Challenge was made to an order dated 17.04.2020 passed by DoE directing payment of fee and in this context the Division Bench held that the contention of the Petitioner that no tuition fees be charged by the schools as the schools are closed during the pandemic was misconceived. Division Bench held that there can be no cavil to the proposition that fee will be payable only if the schools run and impart education. However, having examined the issue, Court found that as a matter of fact that most schools were providing education online and in this view of the matter held tuition fees could not be exempted and that DoE had struck the right balance by allowing unaided schools to charge tuition fees so that expenses on salaries and other curricular activities etc., could be defrayed. I am unable to discern any finding/observation or a direction in the judgment that in the absence of a fee hike, unaided schools can continue to pay pre-revised scales, overlooking and ignoring the recommendations of the Pay Commissions and the mandate of Section 10(1) of 1973 Act. In fact, School is putting forth this argument perhaps oblivious of the fact that another Division



Bench of this Court has held contrary to the submissions of the School herein and rejected this very contention of Ahlcon Public School in the judgement delivered in ***Ahlcon Public School v. Omita Mago and Ors., 2023 SCC OnLine Del 368***. The appeal before the Division Bench arose out of a judgment of the learned Single Judge of this Court in W.P.(C) No. 4979/2021. The prayers in the writ petition before the writ Court are extracted hereunder:

“i) issue any appropriate writ, order or direction, directing the Respondent Ahlcon Public School to forthwith pay to the petitioners the amounts wrongfully deducted from their salaries from the month of June 2020 and onwards till date;

ii) issue any appropriate writ, order or direction, directing the Respondent Ahlcon Public School to fix the pay of the petitioners in terms of the 7th pay commission w.e.f 01.01.2016 and pay to petitioners pay, allowances, other benefits including arrears of salaries and all the consequential benefits;

iii) issue any appropriate writ, order or direction, directing the Respondent No.2/Director of Education to take action in accordance with the provisions of Section 10 of the Delhi School Education Act, 1973 against the Respondent/School for aforesaid failures on the part of the Respondent/School;

iv) pass any other, order or direction or such further orders as may be deemed just and appropriate, in the facts and circumstances of the case and also in the interest of justice, in favour of the petitioners; and v) allow the present writ petition with cost, in favour of the Petitioners.”

24. Contentions raised on behalf of the School therein were similar to the ones raised herein and I may refer to paragraph 6 of the judgment which is extracted hereunder for ready reference:-

“6. According to the learned counsel for the respondent No.1, the fee is the only source of revenue for the respondent No.1 and a compatible fee structure conducive to meeting the remuneration and the service benefits to the staff, with infrastructural facilities, with all modern learning tools and provisions for future growth is the only requisite. The respondent No.1 has all along extended the pay scales to its staff right till the 6th CPC. The 7th CPC pay scales were



introduced with effect from January 01, 2016, the orders for which were issued subsequently at a much later date. Following the past practice and in order to follow the provisions, the respondent No.1 had duly worked out the budget estimates for the year 2016-17 and in a meeting held in the month of November 2015, the said estimates were approved by the Management Committee of the respondent No.1 / School with the due representation of the Director of Education's Nominees with a 10% fee hike vis-a-vis the 2015-16 fee structure. The 7th CPC pay scales were not a part of the consideration at that time as it was still in the pipeline. The 10% hike was just to cover the normal inflation and to take care of the annual increments, two D.A. instalments and usual overall increase. The Director of Education for the reasons best known to them invited the proposals afresh in April, 2016 with the observations that the respondent No.1 had not taken the prior approval of the Director before raising the fee. The respondent No.1 informed the Director that since the decision was arrived at in the due presence of his nominees, the condition of prior approval stands fulfilled. The Director was further informed that the Management Committee of the respondent No.1 with the due representation of the Director of Education's nominee has all along been finalizing the budget estimates for the ensuing academic year including the fee structure. The Director of Education has also from time to time issued guidelines and instructions to its nominees to ensure that the provisions governing the finalization of the estimates are duly fulfilled while approving the same. Further, the Director has also issued instructions to its nominees to immediately bring to notice, any deviation in this regard, and thus it could easily be arrived at the concurrence of the nominee in itself carries the prior approval condition. The Director has never in the past made such an observation. That apart, the respondent No.1 also submitted the proposals afresh. After a prolonged exercise and inspecting those very documents which were already in the possession of the Directorate in the form of part of a return or a singular document, reached to a conclusion that the respondent No.1 has enough surplus funds and there was no need to increase the fee. The Directorate while arriving at the surplus figure had not taken into consideration the funds provided for the terminal benefits-like Gratuity etc. which as per the statutory provisions cannot be a part of the surplus. In between the 7th CPC pay scales were introduced and the Director issued a detailed order on October 17, 2017 inter alia permitting the schools to increase the fee to a certain percentage without seeking further approval of the Director and in case of any increase beyond that percentage, to refer the case to the Director. The Director in the said order himself admits an increase of 25% in fee due to implementation of 7th CPC. Later on, the Director withdrew the order for the reasons best known to him stating that this Court had issued such orders. The fact was



otherwise, inasmuch as the order was withdrawn on the Director of Education's own accord. The Director thereafter invited proposals for the subsequent years much after the beginning of each academic year and again called afresh a number of documents and papers which already stood examined and which were already with them while deciding the 2016-17 and 2017-18 fee structure."

25. Pithily put, the contention of the School was that the fee is the only source of revenue for the School and a compatible fee structure conducive to meeting the remuneration and service benefits of the staff with infrastructure facilities, etc. is the only requisite. It was also argued by the School that 7th CPC pay matrix was introduced w.e.f. 01.01.2016, though orders were issued subsequently and following the past practice, School had duly worked out the budget estimates for the year 2016-17. 7th CPC pay revision was not a part of the consideration at that time as it was still in the pipeline. DoE had earlier permitted the schools to increase the fee and had admitted an increase of 25% in fee due to implementation of 7th CPC but had later withdrawn the order and school was not in a position to grant the benefits of pay revision.

26. After hearing the parties, Court negatived the contention of the School and observed that the issue of grant of benefit under 7th CPC is no more *res integra* and relying on the earlier judgments including in ***Kuttamparampath Sudha Nair (supra), etc.*** allowed the writ petition as follows:-

"9. Having heard the learned counsel for the parties, suffice to state that the issue which arises for consideration, i.e., grant of benefit under 7th CPC is no more res integra in view of Section 10 of the DSE Act which reads as under:

"10. Salaries of employees - (1) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate



authority: Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognised private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such school to bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority: Provided further that the failure to comply with such direction shall be deemed to be noncompliance with the conditions for continuing recognition of an existing school and the provisions of section 4 shall apply accordingly.

(2) The managing committee of every aided school shall deposit, every month, its share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator and the Administrator shall disburse, or cause to be disbursed, within the first week of every month, the salaries and allowances to the employees of the aided schools.”

The said Section contemplates that the pay and allowances of the employees of recognised private Schools could not be less than that of the employees of the Government run Schools.

10. The issue stands settled by the judgment of the Full Bench in the case of Guru Harkishan Public School v. Director of Education and Ors., (2015) 221 DLT 448 wherein this Court, while examining applicability of Rule 121 of the Delhi School Education Rules, 1973, though not in the context of Section 10 of the DSE Act, has in detail referred to the judgment of the Supreme Court in Frank Anthony Public School Employees’ Association v. Union of India (UOI) and Ors., (1986) 4 SCC 707, and finally held 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. Hence, on that analogy, the petitioners herein, who are employees of an unaided private school are entitled to the benefits as is being given to the employees of the government run schools.

11. Having said that the only plea of the learned counsel for the respondent No.1 / School is financial hardship. The said submission is also unsustainable. This issue is also no more res integra in view of the judgment of this Court in Kuttamparampath Sudha Nair v. Managing Committee Sri Sathya Sai Vidya Vihar and Anr., W.P.(C) 928/2019, decided on May 06, 2021, wherein in paragraph 35 to 37 which I reproduce as under:



“35. The next contention of the School, without prejudice to the earlier contention, was that the School is run by a Charitable Trust and its financial condition is weak with total number of students being less and many of them covered under the EWS/DG category. School is thus unable to bear the burden of disbursing the salaries and the emoluments as per the CCS (Revised Pay) Rules, 2016 in respect of the Government employees. Courts have repeatedly held that paucity of funds or financial crunch of an employer cannot be an answer to noncompliance of a statutory mandate. In the context of payment of minimum wages, the Supreme Court in Unichovi vs. State of Kerala, AIR 1962 SC 12 and Hydro (Engineers) Private Ltd vs. Workmen 1969 (1) SCR 156 held that hardship to an employer to carry on its activity, on account of payment of minimum wages, is an irrelevant consideration for determination of minimum wages. The State assumes that every employer must be in a position to pay minimum wages before he resorts to employment. In Air Freight Ltd. vs. State of Karnataka, 1996 (6) SCC 547, this solemn principle was reiterated.

36. In the context of Section 10 (1) of DSEA&R, this Court had rejected the argument of paucity of funds as an irrelevant consideration in the case of Samaj Shiksha Samiti vs. Delhi State Saraswati Shishu Bal Mandir Karamchari Kalyan 2002 (97) DLT 802. In this context, I may quote a few passages from the judgment in Veena Sharma (Mrs.) & Ors. vs. The Manager, No.1 Air Force School Palam & Ors. 2005 VII AD (Delhi) 517 as follows:-

“18. Two things clearly emerge, from the above position. The respondent school is under an obligation to comply with the provisions of Section 10. This obligation is not relieved in any manner; rather, Section 4(1) reinforces this conclusion. Further, the Director and other authorities under the Act have no power to exempt any recognized school from its liability to comply with Section 10. The reliance of the school on the implied approval by the Central Government, is in my considered opinion of no consequence. There is no dispute about the fact that the Directorate itself has been insisting upon payment of salary and allowances in accordance with Section 10. Indeed that was the condition of recognition itself. The second issue is that financial hardship is also no consideration or ground to relieve an employer of his statutory obligation to pay what society has decreed as the minimum salary of teachers and staff, through the provisions of Section 10 of the Act.



19. The submission of learned counsel for the school that if the relief is granted and the pay scales have to be released in favour of the petitioners, a situation might arise leading to the close of the school is somewhat similar to the apprehensions voiced by the Management in Frank Anthony case (*supra*). The Supreme Court dealt with arguments in the following terms:-

“We must refer to the submissions of Mr. Frank Anthony regarding the excellence of the institution and the fear that the institution may have to close down if they have to pay higher scales of salary and allowances to the members of the staff. As we said earlier the excellence of the institution is largely dependent on the excellence of the teachers and it is no answer to the demand of the teachers for higher salaries to say that in view of the high reputation enjoyed by the institution for its excellence, it is unnecessary to seek to apply provisions like Section 10 of the Delhi School Education Act to the Frank Anthony Public School. On the other hand, we should think that the very contribution made by the teachers to earn for the institution the high reputation that it enjoys should spur the management to adopt at least the same scales of pay as the other institutions to which Section 10 applies. Regarding the fear expressed by Shri Frank Anthony that the institution may have to close down we can only hope that the management will do nothing to the nose to spite the face, merely to put the teachers in their proper place. The fear expressed by the management here has the same right as the fear expressed invariably by the management of every industry that disastrous results would follow which may even lead to the closing down of the industry if wage scales are revised.

20. The submission of paucity of funds, has to be, therefore, rejected. The subjective or individual hardship of a management, that too sponsored by no less an Organization of the stature of Indian Air force, which even went to the extent of seeking to deny liability on the ground that the school caters to the children of JCOs (Junior Commissioned Officers) impliedly perhaps suggesting that the children of such employees can be taught without compliance with minimum standards imposed by law, cannot be countenanced.”

37. In this regard, I am also fortified in my view by a judgment of a Co-ordinate Bench in *Deepika Jain vs. Rukmini Devi Public School & Ors.* W.P. (C) 237/2013 decided on 23.09.2013, where



implementation of 6th CPC benefits was sought by the Petitioner and the Court held as follows:-

“3. I have held in many cases, including the case of Meenu Thakur Vs. Somer Ville School & Ors. W.P.(C) 8748/2010 decided on 13.2.2013 that paucity of funds is not a ground to not pay amounts as per the 6th Pay Commission Report and the order of the Director of Education dated 11.2.2009. A Division Bench of this Court in LPA 286/2010 titled as Rukmani Devi Jaipuria Public School Vs. Sadhna Payal & Ors. decided on 11.5.2012 has also held that paucity of funds is not a ground not to make payments as per the 6th Pay Commission Report.”

12. Following the aforesaid judgments, even this Court in the case pertaining to grant of arrears of salary has also granted similar reliefs to the petitioners in the cases of Shashi Kiran & Ors. v. Siddharth International Public School & Anr., W.P.(C) No.2734/2021 and Amrita Pritam & Ors. v. S. S. Mota Singh Junior Model School & Ors., W.P.(C) 1335/2019 dated September 22, 2021. In a more recent judgment, this Court while deciding a batch of petitions with the lead matter being Shikha Sharma v. Guru Harkrishan Public School & Ors., W.P.(C) 3746/2020, decided on November 16, 2021, has granted the benefits of the 7th CPC along with the arrears to the petitioners therein.

13. In view of the above, this writ petition need to be allowed and the respondent No.1 / School is directed to re-fix the salaries and other emoluments of the petitioners under 7th CPC in accordance with the rules and pay the arrears to the petitioners within a period of three months from today. It is made clear that the arrears shall not carry any interest, if the amount is paid within a period of three months. Any delay beyond the period of three months, shall entail an interest @ 6% per annum.”

27. Challenging this judgment, School filed an appeal before the Division Bench and it would be significant to capture the contentions raised by the School before the Division Bench, which are extracted hereunder :-

“5. Mr. Jayant Mehta, learned Senior Advocate for the Appellant School, contends that fee is the only source of revenue available to the Appellant School. He states that the land on which the School is being run was allotted by the DDA in the year 1988 and one of the conditions while allotting the land was that the School would admit 25% of the children from the Economically Weaker Sections and will



not charge any fee from such children. He states that under Section 17(3) of the Delhi School Education Act, 1973, the School has to file with the Directorate of Education a full statement of the fees to be levied during the ensuing academic session and except with the prior approval of the Director, the school cannot charge any fee in excess of the fee as stipulated by the Department.

6. Mr. Mehta has drawn the attention of this Court towards the expenses which are to be incurred by the School in its day-to-day functioning and also the amount of pension, gratuity etc. which are to be paid to the retired teachers. He contends that the fee that is permitted to be charged by the school has to be approved by the Department and unless the Department of Education agrees for enhancement of fee, the school cannot increase its fee. He states that the school is in no position to pay the arrears of salaries.

7. Mr. Mehta points out that, as of today, for the year 2022-2023, the total revenue for the Appellant School is Rs. 23,01,35,984/- and the arrears of the 6th Pay Commission and the salaries as per the 7th Pay Commission and the other expenditure comes to Rs. 23,72,76,000/- He states that there is a deficit of Rs. 71,40,016/-. He states that until and unless the annual charges and development charges are increased by 10 per cent, it will take minimum five years for the Appellant School to pay the arrears of salaries.”

28. The Division Bench did not accept the plea of fee hike being a condition precedent to pay revision of the employees under 7th CPC and held that the school was governed by the Delhi School Education Act, 1973 and Section 10(1) applied with full force. Paucity of funds cannot be a ground for permitting the school not to pay the emoluments to its employees and that the school had no other alternative but to pay the arrears of salary and emoluments as per the 7th CPC. Relevant paras are as follows:-

“8. Section 10 of the Delhi School Education Act, 1973 mandates that the scale of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognized private schools cannot be less than those working in the schools run by the Central Government, State Government, Municipal Corporation etc. Section 10 of the Delhi School Education Act, 1973 reads as under:—

“10. Salaries of employees.—



(1) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority:

Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognised private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such school to bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority:

Provided further that the failure to comply with such direction shall be deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of section 4 shall apply accordingly.

(2) The managing committee of every aided school shall deposit, every month, its share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator and the Administrator shall disburse, or cause to be disbursed, within the first week of every month, the salaries and allowances to the employees of the aided schools.”

9. Admittedly, the Appellant School is governed by the Delhi School Education Act, 1973 and Section 10 of the Act applies with all force. Paucity of funds cannot be a ground for permitting the school not to pay the emoluments to its employees. The said issue has been dealt with and has been answered against the schools in several judgments passed by this Court [Refer to: Kuttamparampath Sudha Nair v. Managing Committee Sri Sathya Sai Vidya Vihar, **W.P.(C) 928/2019** decided on May 06, 2021; Shashi Kiran v. Siiflltarth International Public School, **W.P.(C) No. 2734/2021** and Amrita Pritam v. S. S. Mota Singh Junior Model School, **W.P.(C) 1335/2019** decided September 22, 2021; Shikha Sharma v. Guru Harkrishan Public School, **W.P.(C) 3746/2020**, decided on November 16, 2021].

10. All these judgments categorically negate the contention raised by the schools that they could not pay the teachers due to paucity of funds.

11. The Appellant School has no other alternative but to pay arrears of salary and emoluments to its employees as fixed by the 7th Pay



Commission. There is no infirmity with the order passed by the learned Single Judge which requires interference by this Court.

12. The appeal is dismissed, along with pending application(s), if any.”

29. Therefore, from a reading of the judgment of the Division Bench, it is clear that the Court did not agree with the primordial contention raised by the school that in the absence of fee hike, the school was unable to implement 7th CPC recommendations. Court took into account all the earlier judgments of this Court where a similar plea of paucity of funds, as a defence to implementation of Pay Commissions’ recommendations was consistently rejected by the Courts including ***Kuttamparampath Sudha Nair (supra)*** and ***Shikha Sharma (supra)***, which are extracted in the earlier part of the judgment. Therefore, in the backdrop of wealth of judicial precedents that exist today, there can be no doubt that Courts have put a stamp of approval on the statutory obligation of the recognized private schools under Section 10(1) of 1973 Act to maintain parity in the pay structure of their regular employees with those of the corresponding status in the schools of the appropriate authority and the plea of fee hike and/or paucity of funds has been rejected as an impediment or obstruction towards fulfilment of this statutory obligation.

30. Insofar as the interim orders relied upon by Mr. Gupta are concerned, it is a matter of judicial record that there is a stay order dated 24.05.2019 in a batch of writ petitions, whereby DoE has been restrained from taking coercive action in terms of its order dated 07.02.2019, wherein DoE rejected the proposal for enhancement of fee for the session 2017-18 and directed not to increase any fee for the said session with a note of caution that non-compliance of the order



will be dealt with in accordance with Section 24(4) of the 1973 Act. The writ petitions are stated to be pending. However, this order is irrelevant to the present controversy of pay revision under 7th CPC and in view of the judgments referred to above, including of the Division Bench in *Ahlcon Public School (supra)* and thus this Court cannot agree with the School that the interim order creates a bar against or an impediment or hurdle in the way of the Petitioners to seek enforcement of their rights for pay revision, which has its genesis in Section 10 of 1973 Act. Mr. Gupta has laid great emphasis on an interim order dated 18.08.2022 passed in W.P.(C) 1635/2020, wherein the Court as an interim measure directed the School to pay to the Petitioner only 25% of the outstanding amounts. First and foremost, being an interim order, the same has no binding effect and secondly, this was an ad-interim measure worked out by the Court at that stage of the matter so as to ensure that at least a part of the outstanding and due amount is released to the Petitioner. Thirdly and importantly, in view of the judgment of the Division Bench in *Ahlcon Public School (supra)*, this interim order cannot come to rescue the School from its statutory liability under Section 10(1) of 1973 Act.

31. Coming next to the objection with respect to the maintainability of the writ petition on ground of delay and laches and the alternative argument that arrears of 7th CPC be restricted to 3 years prior to the filing of the writ petition, suffice would be to state that the contentions of the School are wholly misconceived and cannot be accepted in view of the judgment of the Supreme Court in *Keraleeya Samajam (supra)*, *albeit* the judgment was in the context of 6th CPC. 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.

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.”

32. 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 (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 DSEA&R



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 Government's directions and statutory obligations. Non-compliance over a long period would not create any special equities in favour of the School and it does not get absolved of its statutory obligation to pay salaries in terms of 6th Pay Commission's recommendations, as pay revision 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. I may pen down here at the cost of repetition that even in *Shikha Sharma (supra)*, this Court has directed release of arrears under 6th CPC to the Petitioners therein without any restrictions/limitation of three years prior to the filing of the writ petitions and in fact 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, 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.

33. In view of this position of law, the argument of the School that the writ petition is barred by delay and laches and/or the arrears be restricted to three years cannot be countenanced and the judgments cited on delay and laches would not aid the School. An argument was raised on behalf of the School that the judgment in *Keraleeya Samajam (supra)* is *per incuriam* and does not bind the School herein. Be it noted that learned counsel concedes that there is no judgment of the Supreme Court to his knowledge where claims of an employee



pertaining to pay revisions under the recommendations of Central Pay Commissions have been rejected on ground of delay and laches or where arrears have been restricted. There is a difference between the nature of cases cited by the School and the claims of the Petitioners herein which pertain to pay revision under 7th CPC recommendations. Carving out the said difference, the Supreme Court held that when 6th CPC was made applicable, duty was cast upon Petitioners' institution to pay revised salary/wages and it was not the staff which was required to move again and again and thus the question of limitation and/or restricting the arrears to 3 years will not come into play. The contention is therefore rejected in view of the binding dictum in *Keraleeya Samajam (supra)* as well as the judgment of the Division Bench in *Vidya Bharati School (supra)*, which is also binding on this Court.

34. Next and the only other grievance ventilated by the Petitioners is with respect to grant of financial upgradations under the MACP Scheme. An unaided private recognized school has an autonomy to adopt the Scheme and this discretion is purely in the domain of the concerned school, is a legal position well settled by the Division Bench of this Court in *Manju Sipayya (supra)*, against which SLP was dismissed by the Supreme Court. However, the position that the School today adopts is rather strange. It is stated that the earlier decision to adopt MACP was under a mistaken notion of law that it was binding on the School to grant the MACP benefits, but after the judgment in *Manju Sipayya (supra)*, School decided to discontinue the Scheme and thus the Petitioners cannot claim financial upgradations. Contrary thereto, counsel for the Petitioners submits that



it is not open to a School to recall the decision of adopting the MACP Scheme, more particularly, when most of the employees including the Petitioners have been granted the benefit of 1st MACP. Attention of the Court is also drawn to paragraph 7 of the counter affidavit filed by the School in another matter being W.P.(C) 1635/2020 admitting the grant of MACP benefits to the teachers as also to a circular issued by DoE on 25.10.2022 stipulating that once the Scheme has been implemented it cannot be discontinued.

35. Having given my thoughtful consideration to this aspect of the matter, I am of the view, that the contentions of the School are wholly devoid of merit. While the School is right in its stand that the option and discretion to adopt or not to adopt the MACP Scheme is with the private recognized unaided school, however, there is no provision in the Scheme which permits the School to exercise this option again and again at their whims and fancies and adopt a pick and choose policy. In the affidavit filed in W.P.(C) 1635/2020, School has admitted that till the year 2018-19, every regular teacher was considered for grant of MACP benefits and therefore, a conscious call has already been taken to adopt the MACP Scheme. Placing reliance on the judgment in *Manju Sipayya (supra)* to wriggle out of the implementation of the MACP Scheme at this stage by itself will not be enough and the School has a much higher onus to establish a plausible reason and any other justifiable ground on account of which the School can be legally permitted to recall its decision to adopt MACP Scheme and deprive the Petitioners of further financial upgradations, which onus it has failed to discharge. Court also takes a serious notice of the stand taken by the School in paragraph 13 of the written note dated 31.05.2023 to



the effect that not a single member of the staff has been paid MACP, which is clearly contrary to the affidavit referred to above and thus false. Even otherwise, the impact and repercussion of permitting such a course of action to the School, at this stage, would create disparity between the employees who have received MACP benefits till 2018-19 and those who are yet to be considered and it needs no reiteration that this would also lead to a serious pay anomaly amongst the employees.

36. As to the relief on this aspect, it may be noted that Petitioners have placed on record a chart reflecting the status of grant/non-grant of 1st/2nd/3rd MACP benefits as also the dates from when the benefits are due. Counsel for the School disputes the contents of the chart and submits that there are certain factual discrepancies and the chart is not accurate. In my view, without getting into the data furnished in the chart, it would suffice to direct that cases of the Petitioners will be considered by the School for grant of 1st/2nd/3rd MACP benefits, as the case may be, in accordance with the Scheme and if the Petitioners are eligible and meet the bench mark, financial upgradations shall be granted.

37. Accordingly, the writ petition is allowed directing the School to grant benefits of pay revision to the Petitioners under 7th CPC w.e.f. 01.01.2016 and refix their salaries and allowances and additionally for those Petitioners who have since retired, retiral/terminal benefits shall also be revised. Arrears of differential amounts on account of revisions shall be disbursed within 8 weeks from today along with interest @ 6% per annum.

38. It is further directed that cases of Petitioners who are eligible



for grant of 1st/2nd/3rd MACP shall be considered in accordance with the provisions of the MACP Scheme and in case they are entitled to the financial upgradations, their pay shall be fixed in the next higher Grade Pay in the applicable Pay Band/appropriate pay level in the Pay Matrix, as the case may be. The entire exercise shall be completed by the School within 3 months from today.

39. Writ petition stands allowed to the aforesaid extent with no orders as to costs.

JYOTI SINGH, J

JUNE 02, 2023/shivam/kks