



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

Judgment reserved on: 09.08.2023

% **Judgment delivered on: 23.08.2023**

+ **LPA 567/2023 and C.M. No. 37336/2023 & 37337/2023**

GREENFIELDS PUBLIC SCHOOL Appellant

Through: Mr. Sunil Gupta, Sr. Advocate with
Mr. Kamal Gupta and Mr. Sparsh
Aggarwal, Advocates.

versus

ANCHLA & ORS. Respondent

Through: Mr. Anmol Panwar, Mr. Hemant
Baisla, Ms. Neha Yadav and Mr.
Shubham Tomar, Advocates for
Respondent No. 1.
Ms. Beral Sewak, Respondent No. 13
in person.
Mr. Gaurav Dhingra, Advocate for
Respondent No 16.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present LPA is arising out of judgment dated 02.06.2023 passed in W.P.(C.) No. 6521/2021 titled *Anchla & Ors. Vs. Greenfields Public School & Anr. (Impugned Judgment)*, whereby the Ld. Single Judge has allowed the writ petition preferred by the Respondents herein.



2. The facts of the case reveal that the Respondents herein are retired employees/teachers of Greenfields Public School. During their period of employment with the Appellant School, the Respondents have served in the school on the posts of Post Graduate Teacher, Trained Graduate Teachers, Assistant Teachers, Lab Assistant etc.

3. The Respondents herein/Writ Petitioners came up before this Court by filing the underlying writ petition seeking the benefit of pay revision keeping in view the recommendations of the 7th Pay Commission along with consequential benefits and also financial upgradation under the Modified Assured Career Progression Scheme (MACP) introduced by the Government of India vide Department of Personnel and Training's Office Memorandum dated 19.05.2009, issued pursuant to the recommendations of the 6th Pay Commission. The Respondents herein/Writ Petitioners prayed for the following reliefs in the Writ Petition:

“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 7th 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.”

4. The facts of the case reveal that the Respondents herein/Writ Petitioners were appointed on regular posts following the procedure established by law as provided under the Delhi School Education Act, 1973 (hereinafter to be referred to as ‘**the Act, 1973**’) read with Delhi School Education Rules, 1973 (hereinafter to be referred to as ‘**the Rule, 1973**’). The details of the Respondent Employees/Writ Petitioners are reproduced as under:

<i>S. No.</i>	<i>RESPONDENTS</i>	<i>DATE OF APPOINTMENT</i>	<i>DESIGNATION</i>
<i>1.</i>	<i>Respondent No. 1/ Ms. Anchla</i>	<i>01.08.1986</i>	<i>TGT (Natural Science)</i>
<i>2.</i>	<i>Respondent No. 2/ Mr. Ramesh Chandra</i>	<i>19.11.1994</i>	<i>Lab Assistant</i>
<i>3.</i>	<i>Respondent No. 3/ Mr. Satyendra Prakash Dixit</i>	<i>11.07.1990</i>	<i>TGT (Maths & Physics) (promoted as PGT</i>



			(Physics) on 01.08.1998 and retired on 30.11.2018)
4.	Respondent No. 4/ Mr. Akhtar Ali	15.09.1983	Lab Assistant (retired on 31.08.2018)
5.	Respondent No. 5/ Ms. Sarita Mathur	01.08.1985	TGT (Science) (retired in July, 2016)
6.	Respondent No. 6/ Ms. Alka S. Kapre	05.07.1985	Assistant Teacher (later appointed as TGT on 31.03.1990 and promoted as PGT in 1998 and retired on 30.09.2017)
7.	Respondent No. 7/ Ms. Saroj Arora	04.07.1986	TGT (retired on 30.04.2019)
8.	Respondent No. 8/ Ms. Sangeeta Saini	20.07.1982	Assistant Teacher (promoted as TGT on 01.07.2014 and retired on 31.08.2021)
9.	Respondent No. 9/ Ms. Meena Kalia	06.08.1987	TGT (retired on 30.09.2021)
10.	Respondent No. 10/ Ms. Shobha Singh	21.07.1987	TGT (appointed as PGT



			(English) on 01.07.1989 and retired on 31.03.2019)
11.	Respondent No. 11/ Mr. Pulkit Sinha	02.09.1985	TGT (promoted as PGT (English) on 01.04.2008 and retired on 30.08.2021)
12.	Respondent No. 12/ Ms. Saroj Arora	05.07.1980	Assistant Teacher (promoted as TGT on 04.07.1986 and retired on 31.01.2018)
13.	Respondent No. 13/ Mr. Beryl Sewak	02.09.1985	Nursery/Teacher Assistant (retired on 31.01.2020)
14.	Respondent No. 14/ Ms. Rekha Chopra	01.07.2002	PGT (Chemistry) (retired on 30.06.2017)
15.	Respondent No. 15/ Ms. Bharti Kumar	01.07.1982	PRT (English) (promoted as TGT (English) on 01.07.1987 and retired on 31.01.2020)



5. The learned Single Judge has allowed the underlying writ petition and has directed the arrears to be released to the Respondents herein/Writ Petitioners under the 7th Pay Commission with effect from 01.01.2016 along with interest at the rate of 6% per annum. The learned Single Judge has also held that the Respondents herein/Writ Petitioners shall also be eligible for MACP keeping in view the MACP scheme.

6. The Respondents herein/Writ Petitioners keeping in view Section 10(1) of the Act, 1973 which provides for grant of same pay scale and allowances, medical facilities, pension and gratuity to the employees of a recognized private school at par with the employees of the government school, raised a claim for grant of higher pay scale at par with the teachers working in aided schools/government schools as per the recommendations of the 7th Pay Commission relying upon the judgments delivered in the following cases:

- 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.

7. In respect of the MACP scheme, it was brought to the notice of the learned Single Judge that the school in question has granted benefit of MACP to other identically placed persons, and, therefore, a claim was also



raised in respect of MACP keeping in view the Department of Personnel and Training Office Memorandum dated 19.05.2009.

8. Learned Counsel appearing on behalf of the Department of Education, Government of NCT of Delhi, has supported the claim of the Respondents herein/Writ Petitioners and stated on affidavit that a circular had already been issued on 25.08.2017 directing the Managing Committees of all the Schools to implement the pay rules for regular employees and grant pay revision as per the recommendations of the 7th Pay Commission with effect from 01.01.2016 keeping in view Section 10(1) of the Act, 1973 and to place the Respondents herein/Writ Petitioners at par with their counter-parts working in government schools.

9. The Appellant School (Respondent before the learned Single Judge), took a plea in the underlying writ proceedings that the claim of the retired teachers is barred by delay and laches as most of them have retired prior to 2018, and the writ petition has been preferred in 2021. Before the learned Single Judge, heavy reliance was placed upon the following judgments:

- a. *Union of India and Others v. Tarsem Singh*, (2008) 8 SCC648 passed by the Hon'ble Supreme Court;
- b. *State of Orissa and Another v. Mamata Mohanty*, (2011) 3 SCC436 passed by the Hon'ble Supreme Court;
- c. *Standing Conference of Public Enterprises v. BSES Rajdhani Power Limited & Ors.*, 2013 SCC OnLine Del224 passed by this Court;



d. *Avinash Sharma v. Tata Power Delhi Distribution Ltd.*, 2021SCC OnLine Del 4904 passed by this Court;

e. And *Kirti Jain v. Kulachi Hansraj Model School & Others*, 2018 SCC OnLine Del 13221 passed by this Court.

10. Learned Counsel for the Appellant School also raised an objection that keeping in view the judgment in the case of *T.M.A. Pai Foundation and Others v. State of Karnataka and Others*, (2002) 8 SCC 481, the Private unaided schools have a right to determine the fee payable by the students as well as the pay structure of their employees. Therefore, by no stretch of imagination, the Appellant school can be forced to revise the salary of its employees as per the recommendations made by the 7th Pay Commission.

11. The Appellant School had raised another ground before the learned Single Judge by taking shelter of Section 17 and 18 of the Act, 1973 read with the Rule 177 of the Rules, 1973 and it was stated before the learned Single Judge that unless and until the school is permitted to enhance its fee, the question of payment of revised salary to the teachers keeping in view the recommendations of the 6th and 7th Pay Commission does not arise.

12. The Appellant School before the learned Single Judge contended that unless and until there is a fee hike permitted to the School, the School is not in a position to revise the pay of its employees keeping in view the recommendations of the 7th Pay Commission.



13. It was also brought to the notice of the learned Single Judge that in respect of enhancement of fees, a proposal was forwarded by the Appellant School to the Directorate of Education, and the Director of Education vide order dated 07.02.2019 has declined the request made by the School to enhance the fee for the Academic Session 2017-18, and the School, thereafter, had challenged the order dated 07.02.2019 by filing a Writ Petition being W.P.(C.) No. 5873/2019. The learned Single Judge vide order dated 24.05.2019 passed an interim order in W.P.(C) No. 5873/2019 staying any coercive action against the School.

14. The learned counsel for the appellant herein has vehemently argued before this Court that the order dated 24.05.2019 means that no coercive action will be taken against the School even if the School does not revise the pay scale under 7th Pay Commission. In respect of MACP, heavy reliance was placed by the learned counsel for the appellant upon the judgment delivered in the case of *Manju Sipayya v. Directorate of Education and Others*, 2019 SCC OnLine Del 10867, and before the learned Single Judge it was contended that the Writ Petitioners cannot claim MACP as a matter of right and it is the discretion of the School to adopt the Scheme.

15. The learned Single Judge has allowed the Writ Petition and Paragraph 32 to 39 of the order passed by the learned Single Judge reads as under:

“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. Noncompliance 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 *KeraleeyaSamajam* (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 re-fix 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.”

16. The learned Single Judge by the aforesaid order has held that the Respondents herein/Writ Petitioners are entitled to the benefit of pay revision under the 7th Pay Commission including arrears thereof keeping in view the Central Civil Services (Revised Pay) Rules, 2016 read with Section 10(1) of the Act, 1973.

17. The learned Single Judge has also rejected the arguments of the School that on the ground of financial hardship, the School will be unable to bear the burden of disbursing the revised salaries and emoluments and arrears. The learned Single Judge has also rejected the ground raised by the



Appellant School regarding direct linkage and inter-dependence and pay revision of employees under Section 10(1) of the Act, 1973, with the right of the School to revise the fee structure under Section 17 of the Act, 1973.

18. The learned Single Judge after placing heavy reliance upon the judgment delivered in the case of *Ahlcon Public School v. Omita Mago and Ors.*, 2023 SCC OnLine Del 368, has arrived at a conclusion that the teachers/staff are entitled for revised pay scale and the law on the subject has already been settled by various judgments delivered from time to time.

19. In respect of MACP scheme, the learned Single Judge has held that it is within the domain of the school to adopt or not to adopt the MACP scheme. However, in the present case as the school has already adopted the MACP in respect of some of the employees, the learned Single Judge held that the Respondents herein/Writ Petitioners are also entitled for grant of benefits under the MACP scheme and denial of benefits under the MACP scheme to the Respondents herein/Writ Petitioners will be violative of Article 14, 16 and 21 of the Constitution of India as it would create disparity between the employees who have received the MACP benefits and the employees who have not received the MACP benefits.

20. Heard Learned Counsel for the Parties at length and perused the record. The undisputed facts of the case reveal that the Respondent employees are retired employees of Greenfields Public School and they came up before this Court seeking benefits of pay revision keeping in view the recommendations of 7th Pay Commission along with consequential benefits and also financial upgradation under the MACP scheme introduced



by Government of India vide Department of Personnel and Training's Office Memorandum dated 19.05.2009 issued pursuant to recommendations of the 6th Pay Commission.

21. The statutory provisions governing the field as contained under Section 10 of the Act, 1973 provides for grant of pay and allowances to the employees of a recognized private school at par with the employees of corresponding school run by the appropriate authority (government schools and schools receiving grant in aid).

22. The aforesaid statutory provision makes it very clear that the teachers serving in private schools are also entitled for benefit of higher pay scale at par with the teachers/employees working in an Aided School/Government School keeping in view the recommendations of pay commissions.

23. It is an undisputed fact that the teachers working in aided schools/ Government Schools have been granted benefit of higher pay scale as per the recommendations of the 7th Pay Commission. The issue involved in the present case is no longer *res integra* and this Court in LPA 450/2022 titled ***Ahlcon Public School Vs. Omita Mago and Ors.***, has dealt with a similar controversy. Paragraph Nos. 5 to 11 of the judgment passed by this Court in the aforesaid LPA reads as under:

“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 2022-23, 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.

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 and Anr., W.P.(C) 928/2019 decided on May 06, 2021; Shashi Kiran & Ors. v. Siifilltarth 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 decided September 22, 2021; Shikha Sharma v. Guru Harkrishan Public School & Ors., 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.”

24. In light of the aforesaid judgment delivered by this Court, the Respondents are certainly entitled to the pay scale recommended by the 7th Pay Commission.

25. Learned Counsel for the Respondent Employees, while the matter was being argued before this court made a statement before the Court, that the school at present is paying salaries to its existing employees as per the recommendations of the 7th Pay Commission and is discriminating with the Respondents herein only because they have attained the age of superannuation.

26. Learned counsel for the Appellant School when confronted with the aforesaid situation admitted the aforesaid fact and has stated categorically in open Court that at present the school is paying salaries to teachers/employees as per the recommendations of the 7th Pay Commission.

27. This Court fails to understand the distinction made by the school in respect of same class of teachers/ employees only on the ground that some



of them have superannuated. The action of the Management is certainly contrary to the law laid down by this Court in the case of *Ahlcon Public School* (Supra), and is also violative of Articles 14, 16 and 21 of the Constitution of India.

28. Learned Counsel for the Appellant School has vehemently argued before this Court that the issue of fee hike is pending before this Court and it would not be in a position to pay revised salaries to the Respondents herein until it revises its fee. In the considered opinion of this Court, Section 10 and Section 17 of the Act, 1973 operate in different fields. Section 17 of the Act, 1973 reads as under:

“17. Fees and other charges.—(1) No aided school shall levy any fee or collect any other charge or receive any other payment except those specified by the Director.

(2) Every aided school having different rates of fees or other charges or different funds shall obtain prior approval of the prescribed authority before levying such fees or collecting such charges or creating such funds.

(3) The manager of every recognized school shall, before the commencement of each academic session, file with the Director a full statement of the fees to be levied by such school during the ensuing academic session, and except with the prior approval of the Director, no such school shall charge, during that academic session, any fee in excess of the fee specified by its manager in the said statement.”

29. It is true that the aforesaid statutory provisions of law make it mandatory for a school to file with the Directorate of Education, a full statement of fee to be levied during the ensuing Academic Session, and except with the approval of the Director, the school cannot charge fee in



excess of the fee as stipulated by the Education Department. However, the said provision does not benefit the case of the Appellant School. The issue regarding applicability of Section 17(3) has been dealt in judgment of the Division Bench of this Court in the case of *Ahlcon Public School* (supra), wherein a similar plea was raised and the Division Bench directed the Employer School therein to pay salaries of its employees as per the recommendations of the 7th Pay Commission. Therefore, the aforesaid plea raised by the Appellant School is of no consequence.

30. Learned Counsel for the Appellant School has relied upon a judgment delivered by the Hon'ble Supreme Court in the case of *Godawat Pan Masala Products I.P. Ltd. v. Union of India*, (2004) 7 SCC 68. The Appellant relies on the said judgment to contend that the Act, 1973 should be read harmoniously and Sections 10 & 17 of the Act, 1973 should be read together in a harmonious manner.

31. This Court has carefully gone through the said judgment delivered by the Hon'ble Supreme Court and is of the view that the school in question cannot escape from its liability of paying higher pay scale to the Respondents herein by taking a plea that there is a correlation between Section 10 and 17 of the Act, 1973. In the considered opinion of this Court, there is no direct linkage, correlation and inter-dependence in respect of payment of salary and right to revise its fee, especially in light of the fact that the School is at present paying salary to its current employees as per the recommendations of the 7th Pay Commission, but not to the Respondents herein as they have superannuated, and therefore, the question of setting



aside the Impugned Judgment delivered by the learned Single Judge does not arise.

32. Learned Counsel for the School has vehemently also argued before this Court that the claim of the employees is barred by delay and laches. This Court in LPA 304/2023 titled ***D.A.V. College Managing Committee Through Its General Secretary Vs. Seema Anil Kapoor & Anr.***, has considered the issue of delay and laches. Paragraph No. 13 of the judgment passed by the Division Bench of this Court in the aforesaid case reads as under:

“13. It becomes pertinent to note that in Vidya Bharati School, the Division Bench had an occasion to notice the judgment rendered by the Supreme Court in Keraleeya Samajam and Another v. Pratibha Dattatray Kulkarni (Dead) Through LRs and Others⁷. Keraleeya Samajam too was a judgment which was rendered in the context of a claim for the payment of arrears as flowing from the 6th CPC. In Keraleeya Samajam the Supreme Court laid emphasis upon the obligation of the employer to implement the recommendations of the 6th CPC and the duties cast upon it in this respect. It was held that once the employer itself had faulted in implementing the recommendations of the CPC, the claim could not have been denied on the ground of delay or laches. We deem it apposite to extract the following paragraphs from the decision of the Supreme Court in KeraleeyaSamajam:-

“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.

7. In view of the above and for the reasons stated above both these special leave petitions deserve to be dismissed and accordingly dismissed.

8. It is directed to the petitioners to clear the arrears within a period of eight weeks from today failing which it shall carry interest at 9%. The Deputy Director



(Education), Nasik Division is hereby directed to see that the present order is complied with by the petitioners and the amount is disbursed to the respective respondents by account payee cheques.””

33. In light of the aforesaid judgment, once the employer itself had faulted in implementing the recommendations of the Central Pay Commission, the claim cannot be denied on the ground of delay and laches. Therefore, in the considered opinion of this Court the learned Single Judge was justified in directing payment of salaries to the employees (Respondents herein) keeping in view the recommendations of the 7th Pay Commission.

34. The other issue involved in the present case is grant of benefit under the MACP Scheme to the Respondents. While it is certainly within the domain of the School to adopt or not to adopt the MACP, however, once the school has adopted MACP scheme in respect of some of its employees, the school cannot be permitted to discriminate and deny the benefit of MACP to the Respondent Employees. Therefore, the learned Single Judge was justified in directing the Appellant School to grant all benefits under the MACP Scheme to the Respondent Employees also. Therefore, this Court does not find any reason to interfere with the judgment passed by the learned Single Judge.

35. In the considered opinion of this Court, especially in light of the fact that the School is also paying salaries to its employees as per the recommendations of the 7th Pay Commission at present, the benefit of the same cannot be denied to the Respondent Employees who have attained the age of superannuation, only on the ground that they have superannuated and,



therefore, this Court does not find any reason to interfere with the judgment passed by the learned Single Judge. The present appeal fails and is accordingly dismissed. However, the School is granted three months' time to comply with the order passed by the learned Single Judge.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SAURABH BANERJEE)
JUDGE

AUGUST 23, 2023

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