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

Date of decision: 24th JANUARY, 2023

IN THE MATTER OF:

+ **LPA 450/2022 & CM APPLs. 33081/2022, . 40110/2022 & 44632/2022**

AHLCON PUBLIC SCHOOL ..... Appellant

Through: Mr. Jayant Mehta, Senior Advocate with Mr. Piyush Gupta, Mr. Rakshit Pandey, Mr. Lakshay Parmar, Advocates

versus

OMITA MAGO AND ORS ..... Respondents

Through: Mr. Ashok Agarwal, Mr. Manoj Kumar, Advocates for Respondents No.1 to 41

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. Aggrieved by the Order dated 24.03.2022 passed by the learned Single Judge in W.P.(C) 4979/2021, the Appellant School has filed the instant LPA.

2. Shorn of details, the facts leading to the instant LPA are as under:-

i. It is stated that the Respondents herein who are the employees of the Appellant School working as librarian, teachers including Pre-Primary, TGT and PGT for various subjects, had filed the writ petition with the following prayers:-

> *"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."

ii. The writ petition indicates the various dates on which the Respondents herein had joined the services of the Appellant School.

iii. The Appellant School is governed by the Delhi School Education Act, 1973 which mandates that the scale of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of the recognized private schools shall not be less than those of the employees of the corresponding status in school run/sponsored by the Central Government, Delhi Administration, Municipal Corporation of Delhi.

iv. It is stated that the employees in the schools run by the government are getting salaries as per the 6th Pay Commission and the 7th Pay Commission. It is the case of the Respondents herein that 7th Pay Commission has not been implemented in the Appellant School. It is stated that from June, 2020, the employees are getting only 60% of their salary which has been paid as per the 6th Pay Commission.

v. It has been stated that despite giving various representations, the Appellant School is not implementing the 7th Pay Commission which the teachers are entitled to from 01.01.2016 and is also not paying the arrears of salary.

vi. The Appellant School filed a counter affidavit primarily contending that the only source of income for the school is fee paid by the students. It is stated that land in which the Appellant School is being run was allotted by the DDA on the condition that the school will admit 25% children from the economically weaker sections of the society and provide freeship in tuition fee to such children. It is also stated that fee payable by the students is fixed by a Committee constituted by the government and the school can charge the fee only in accordance with the fees fixed by the said Committee. It is stated that the fee has not been fixed in accordance with the salaries to be paid to the teachers under the 7th Pay Commission.

vii. It is stated that since the Directorate of Education, which constitutes the Committee, has not permitted the Appellant to raise fee, the Appellant School is not in a position to pay the salaries as per the 7th Pay Commission. It is further stated in the counter affidavit that due to COVID pandemic, various orders have been passed by this Court and there was a reduction in the revenue of the School. It is stated that the revenue was not sufficient to meet the salaries payable to the teachers and staff and for other expenditure for running the school. The School was, therefore, left with no other alternative but to reduce the amount payable to the employees. It is stated that the School has not been permitted to increase its fee because of which the School is unable to meet its expenditure.

viii. The learned Single Judge by the Order impugned herein relying on the judgments of this Court, has allowed the writ petition filed by the Respondents herein and has directed the Appellant School to pay the arrears of salary and the salaries according to the 7th Pay Commission.

ix. Aggrieved by the said order, the present LPA has been filed.

3. This Court gave time to the Appellant School to provide a timeline by which it would be able to clear the arrears of salary and implement the 7th Pay Commission. Despite several opportunities, the Appellant School has not been able to provide any concrete plan to this Court so that the deadlines can be fixed for payment of arrears of salary and for payment of salary according to the 6th Pay Commission and the salaries payable under the 7th Pay Commission. This Court, therefore, is proceeding ahead with the hearing of the appeal on merits.

4. Heard learned Counsel for the parties and perused the material on record.

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:*
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> *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. Siiftlltarth 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.

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

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

JANUARY 24, 2023
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