



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

% **Date of order : 9th August, 2023**

+ **W.P.(C) 10918/2021**

RABINDER JIT KAUR

..... Petitioner

Through: **Ms.Shikha Sharma Bagga, Advocate**

versus

PREET PUBLIC S. SEC. SCHOOL AND ORS Respondents

Through: **Mr.Mukul Saluja, Advocate for R-1 and 2**

Ms.Latika Choudhury, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present Writ Petition under Article 226 of the Constitution of India has been filed by the petitioner seeking the following reliefs:

*“a) Direct the respondent no. 1 & 2 to disburse the lawful arrears of salary along with the arrear of gratuity, as computed in the annexed calculation sheet with interest @12% P.A. to the petitioners as in Annexures P/2 (colly), P/3 (colly), P/4 (colly), P/5 (Colly) & P/6 (Colly).
b) allow the writ petition with cost;
c) or pass any other order of further orders this Hon’ble court be fit on the basis of above-mentioned facts and circumstances of the case.”*



2. The petitioners are teachers by profession and had been working as Trained Graduate Teachers ('TGT' hereinafter) with the respondent No. 1 school ('respondent School' hereinafter) since 1995. The petitioner Nos. 1-3 got superannuated at different times between 2018-2020, the petitioner No. 4 was suspended from the services on ground of misconduct and the petitioner No. 5 is still employed with the respondent School.
3. The respondent School was established and is being run by the respondent No. 2 society ('respondent Society' hereinafter) as recognized by the respondent No. 3, the Directorate of Education ('respondent Directorate' hereinafter) under the provisions of Delhi School Education Act, 1973 ('the DSEAR' hereinafter) read with the Rules provided thereunder.
4. After the implementation of the 6th Central Pay Commission ('CPC' hereinafter), the teachers employed in private unaided recognized schools got eligible for the MACP and the revised pay scales by virtue of Section 10(1) of the DSEAR.
5. In 2017, the Delhi Government adopted the 7th CPC and ordered all the private schools to implement the same w.e.f. 1st January, 2016, but the respondent School did not implement the recommendations of the CPC and defied the payments in that regard as well.
6. Aggrieved by the non-implementation of the 7th CPC and non-payment of the arrears of 6th CPC, the petitioners have preferred the instant writ petition before this Court.
7. The learned counsel appearing on behalf of the petitioners submitted that the respondent School has deliberately failed to pay the lawful salary



and other entitlements as guaranteed to the petitioners under Section 10(1) of the DSEAR.

8. It is submitted that the respondent School albeit well aware of the entitlement of the petitioners did not implement the recommendations of the 6th and 7th CPC and has been paying unlawful salaries to the petitioners as per its whims and fancies.

9. It is submitted that the petitioners were forced to sign the undertaking by the respondent School, to not seek lawful salary for the period of 1st January 2006 to 31st August 2008 and the same cannot be treated as waiver in law. It is further submitted that even though the respondent School has now disbursed the arrears, there is a difference of more than Rs.5,000/- per month of the salary as alleged to be calculated by the respondent School from the actual entitlement of the petitioners.

10. Therefore, the learned counsel appearing on behalf of the petitioner seeks that this Court allow the present Writ Petition and direct the respondent School to disburse the actual salaries and arrears as statutorily mandated by the Government on the recommendation of the 6th and 7th CPC.

11. *Per Contra*, the learned counsel appearing on behalf of the respondent School and respondent Management vehemently opposed the Writ Petition and denied the averments made by the petitioners.

12. It is submitted that after superannuation, the petitioners No. 1 to 3 have been paid the gratuity and other retirement benefits in a timely manner. However, petitioner No. 4 is not entitled to gratuity and other retirement benefits due to gross misconduct committed while working at the respondent



School. Petitioner No. 4 was dismissed from service after the charges were proven against him by the inquiry committee. It is submitted that petitioner No. 5 is currently employed at the respondent School, and retirement benefits will only accrue after superannuation or voluntary retirement.

13. It is submitted that petitioners No. 1 to 4 had submitted a handwritten letter along with a duly sworn affidavit dated 11th June, 2013, indicating their decision not to claim past benefits. They had also agreed to continue receiving the pay and allowances that they were getting prior to the implementation of the 6th CPC. The petitioners had voluntarily waived their rights/claims for the arrears of pay as per the 6th CPC from 1st January, 2006 to 31st August, 2008, and are now falsely claiming coercion by the respondent School.

14. It is further submitted that the respondent School has not implemented the recommendations of the 7th CPC due to financial difficulties, but it is conceded by the counsel of the respondent School that they shall clear all the dues in the near future.

15. Hence, in view of the foregoing discussions, it is prayed on behalf of the respondent that this Court be pleased to dismiss the instant Writ Petition, being devoid of any merit.

16. Heard the learned counsel for the parties and perused the records.

17. In the instant case, the petitioners were serving as the permanent teachers in the respondent School and some of them got superannuated without getting the due increment even after the implementation of the 6th and 7th CPC mandated by the Government.



18. It is pertinent to mention that the respondent School as managed by the respondent Management is recognized under the DSEAR governed by the respondent Directorate. No doubt, that the respondent School is an unaided private school, however, it is well within the bounds of the DSEAR and is legally obliged to implement the orders or directions given by the Delhi Government. Section 10(1) of the DSEAR provides that salaries of the employees of an unaided private school should not be less than their counterparts working in the government schools. The said provision is reproduced herein:

“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.”

19. The language of the provision is clear and entitles the employees working in the private unaided schools to get the salaries as per the norms passed by the Government. The said provision is also supplemented by the Rule 107 of the DSEAR which mandates the pay of the employees of a private school to be at par with the employees in the Government Schools. The said Rule is reproduced hereunder:

“107. Fixation of pay (1) The initial pay of an employee, on first appointment, shall be fixed ordinarily at the minimum of the scale of pay: Provided that a higher initial pay, in the specified scale of pay, may be given to a person by the appointing authority: Provided further that no higher initial pay shall be granted in the case of an aided school except with the previous approval of the Director. (2) The pay of an employee on promotion to a higher grade or post shall be determined by the same rules as are applicable to the employee of Government school.”

20. On perusal of the aforesaid provision and Rule, it is amply clear that the private unaided school employees are considered at par with the employees at the Government School and the same rules are applicable to



both of them. Treatment of the private teachers of a recognized school at par with their government counterpart is not new and has been settled by this court and the other courts in a catena of judgments.

21. In ***Veena Sharma v. Manager, No. 1 AIR Force School Palam and Ors.*** 2005 SCC OnLine Del 871, the Coordinate Bench of this Court affirmed the equal treatment of employees of the private schools with that of those employed in the government schools and held as under:

“15. Although the Minimum Wages Act does not apply in terms of teachers and schools, nevertheless Section 10, to the extent it obligates managements of recognized schools to pay the same salary and allowances and grant the same terms and conditions, applicable to the staff of school of the appropriate authority, constitutes a minimum standard regarding pay/salary. No management, of an aided or unaided school can legitimately claim exemption from applicability of this minimum standard.

16. It is a settled law that hardship to an employer to carry on its activity, on account of payment of minimum wages is an irrelevant consideration for the determination of minimum wages, see Unichovi v. State of Kerel, AIR 1962 SC 12; Hydro (Engineers) Private Ltd. v. Workmen, 1969 (1) SCR 156. It is also been held that the State assumes that every employer must pay the minimum wage before he resorts to employment. These principles have been reiterated time and again, right down to the position in Air Freight Ltd. v. State of Karnataka, 1999 (6) SCC 547.

17. In respect of Section 10 of the Act itself, the argument of paucity of funds being an irrelevant consideration has been ruled against in the judgment reported as Samaj



Shiksha Samiti v. Delhi State Saraswati Shishu Bal Mandir Karamchari Kalyan, 2002 (97) DLT 802.

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 CBSE to its own pay scales or 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.”

22. Therefore, it is crystal clear that Section 10 of the DSEAR provides that teachers of unaided private schools are also entitled to the same pay and emoluments as those of the Government Schools, in terms of the obligation enjoined upon the private recognized schools. This Court, therefore, is of the considered opinion that the respondent School is bound by the provisions laid down by the executive and has to ensure payment of salary and allowances and also extend all terms and conditions of service to its employees at par with that of the employees of corresponding status in schools that are run by the appropriate authority, as per Section 10 of the



DSEAR.

23. The respondent Directorate had notified the implementation of the 6th CPC on 19th August, 2009 and the petitioners being the permanent employees of the private school were entitled for the increment and disbursement of the arrears since then. However, during the period of its implementation, the petitioners were allegedly threatened by the respondent School to swear on the affidavit to not claim the arrears of the salary of the 6th CPC with a verbal agreement to comply with the recommendations of the 7th CPC with an immediate effect.

24. The principle that any agreement in which a party agrees to and/or forbears from an act under coercion is well settled, rendering such an agreement voidable at the behest of the coerced party. In ***Puri Construction P. Ltd. v. Larsen and Anr, 2015 SCC OnLine Del 9126***, the Division Bench of this Court held that the agreement between the parties can be declared null and void if the parties satisfies the existence of economic duress and held as under:

“88. The authorities discussed previously, especially recent judgments of the Supreme Court have dwelt upon circumstances where the parties are allowed to contend or take a position which is seemingly contradictory or in conflict with the earlier position if it can establish or prove that it was not a free agent. In other words, economic duress is now a recognized head answering the description of “coercion” entitling the contracting party to avoid the contract or some of its terms. This head of “economic coercion” would fall



within the meaning of Section 16 of the Indian Contract Act, 1872 which defines “undue influence” as one where the relation subsisting between the parties is such that one of them is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. Section 16(3) states that, where a person in a position to dominate the will of the other enters into a contract with him and the transaction appears on the face of it or on the evidence of it to be unconscionable, the burden of proving that there was no undue influence is on the person who is able to dominate the will of the other. Illustrations (c) and (d) particularly deal with cases of economic duress or undue influence. Given the nature of evidence, which was on the record before the Tribunal and the legal position as to economic duress being one of the factors that can successfully avoid a contract, there is no patent illegality in the findings recorded in the award. Likewise, it cannot be said that the Tribunal arrived at a finding which is contrary to the substantive law of the country or contrary to justice and morality. As a result, the findings of the learned Single Judge that Supplementary Agreement could not be characterized as the product of undue influence and economic duress, because both parties were corporate entities is unsustainable, is, therefore, set aside”

25. On perusal of the aforesaid paragraph, it is made out that the parties under economic duress can claim coercion on part of the employers. It is evident that the employer and employee do not stand on equal footing when entering into an agreement and the burden of proof is on the respondent to



prove the non-existence of the coercion as alleged by one of the parties.

26. It is well settled that a waiver is an intentional relinquishment of right and needs to be signed with free consent. The essential element of a waiver is that there must be a voluntary and intentional relinquishment of rights. Therefore, there should be an opportunity given to a party to freely make a choice for relinquishment of their rights.

27. In the instant case, it is clear that despite the petitioners' permanent employee status, the parties cannot be considered to be on equal terms when they agreed to waive their legal right to arrears following the implementation of the 6th CPC. The waiver signed by the petitioners cannot be termed a legitimate waiver as the petitioners were coerced to sign the affidavit on the basis of a false promise and the same cannot be construed as a voluntary and intentional relinquishment of rights. Therefore, the said waiver as signed by the petitioners is illegitimate and cannot be a ground for non-disbursement of revised salary as implemented and mandated by the respondent Directorate.

28. The 7th CPC was implemented by the respondent Directorate by a notification dated 17th October, 2017. However, the respondent School has acknowledged its failure to comply with this notification and cited the financial difficulties as the reason for the same. It has been held in several judgments and is a well settled position of law that paucity of funds cannot be a ground for non-compliance with the statutory mandate and the same is an irrelevant consideration.

29. The Hon'ble Supreme Court in *Frank Anthony Public School*



Employees' Assn. v. Union of India, (1986) 4 SCC 707 reiterated the aforesaid principle in the following manner:

“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.

30. In ***Kuttamparampath Sudha and Anr. v. Managing Committee Sri Sathya Sai 2021 SCC OnLine Del 2511***, the Coordinate bench of this Court reiterated the settled position of law regarding the payment with respect to the 7th CPC and held 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.”.

31. Therefore, the financial position of the employer is irrelevant and the respondent School is bound to comply with the notification issued by the respondent Directorate. Despite claiming financial difficulties as the rationale for not adhering to the 7th CPC recommendations, the respondent School's justification cannot be considered valid for withholding salaries and



arrears that have been pending till date. The said position of law was also reiterated recently by the Division bench of this Court in ***Bharat Mata Saraswati Bal Mandir v. Vinita Singh & Ors.*** 2023 SCC OnLine Del 3934 whereby this Court directed the School to disburse the arrears and held that the statutory liability cannot be ignored on grounds of financial condition of the School.

32. On perusal of the facts on record, it is also established that the operations of the respondent School were taken over by the respondent Directorate for the reason of untimely disbursement of the salaries of the employees. It is clear that the respondent School did not learn from its past mistakes. Therefore, non-compliance of the statutory mandate by the respondent School can only be characterized as a deliberate attempt to disregard the Rules established by the executive and the same cannot be permitted.

33. To conclude, it is pertinent to reiterate that the petitioners being employees of the private unaided schools are entitled to the salary and benefits under the recommendations of the 6th and 7th CPC. Section 10 of the DSEAR being the settled position of law requires the respondent School to give the salaries and benefits to its employees not less than their counterparts working in the Government Schools. It is also clear that the waiver form signed by the petitioners was signed under duress and the petitioners were coerced to sign the same. Therefore, the same cannot be construed as a legally valid agreement as the increment in the salaries and gratuity as mandated by the respondent Directorate is intended to benefit a class of



employees, and the purpose would be defeated if the said waiver is termed legally valid.

34. Consequently, this Court is of the view that the present Writ Petition has merits and therefore, has been allowed. The petitioner Nos. 1 to 3 are entitled to the arrears as per the recommendations of the 6th and 7th CPC. As per material on record, it is made out that major penalty proceedings were initiated against the petitioner No. 4 and he was removed from the services and the terminated *vide* order dated 9th March, 2021 which was duly approved by the respondent Directorate *vide* order dated 24th March, 2021. However, the petitioner No. 4 is still entitled to get the arrears against the salaries accrued for the period he worked in the respondent School. Insofar as the petitioner No. 5 is concerned, he is still employed in the respondent School. Hence, the petitioner No. 5 is not entitled to get the retirement benefits, however, will receive the arrears due against the salary withdrawn during that time period.

35. Accordingly, the respondent School is directed to pay the difference in the arrears along with 12% interest and pay the salaries to the petitioners within 12 weeks according to the pay matrix as decided and annexed as Annexure P/2 to P/6 in the petition. The respondent Directorate is directed to ensure that the respondent School complies with this order.

36. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 9, 2023/SV/AV

Click here to check corrigendum, if any