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

% *Date of Decision: 31st January, 2023*

\+ W.P.(C) 17288/2022

MS. MANINDER KAUR SAWHNEY ..... Petitioner
Through: Mr. Parminder Singh Goindi, Advocate.

versus

EDUCATION DEPARTMENT & ORS. ..... Respondents
Through: Ms. Latika Chaudhary, Advocate for R-1.
Mr. Gaurav Kr. Pandey, Advocate for R-2 to R-5.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

C.M. APPL. 54950/2022 (exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

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3. Petitioner has filed the present writ petition seeking direction to Respondent Nos.2 and 3/Guru Harkrishan Public School (hereinafter referred to as "School") to release all the retirement benefits such as balance amount of gratuity, etc. as well as arrears of salary as per 7th Central Pay Commission (CPC) including TA and DA for the period 2012-2014, along with interest.

4. Petitioner was inducted as Primary Teacher on 07.07.1979 and retired on superannuation on 31.01.2017 as PGT (English). It is the case of the Petitioner that upon retirement the Petitioner is entitled to all terminal benefits including gratuity amounting to Rs.14,16,360/-,

against which only Rs.10,00,000/- have been released to her. Petitioner is also entitled to TA/DA for the period 2012-2014 which comes to approximately Rs.1,00,000/-. It is also the grievance of the Petitioner that the salary and emoluments of the Petitioner ought to have been revised as per the 7th CPC recommendations which has not been done despite the fact that this is the statutory obligation of the School.

5. Learned counsel for the Petitioner submits that the reliefs sought by the Petitioner are covered by several judgments of this Court and there is no reason why the writ petition should not be allowed. Heavy reliance is placed on the judgment of this Court in ***Shikha Sharma v. Guru Harkrishan Public School & Ors, 2021 SCC OnLine Del 5011.***

6. Learned counsel for Respondent No.1/DOE supports the stand of the Petitioner, while learned counsel for the School is unable to dispute that the case of the Petitioner is squarely covered by the judgment in ***Shikha Sharma*** (supra).

7. Having heard the learned counsels for the parties, this Court finds merit in the contentions of the Petitioner that she is entitled to pay revision under the 7th CPC and consequent refixation of the salary and release of arrears. Relevant paras of the judgment in ***Shikha Sharma (supra)*** are as follows:

> *"26. So, it is clear that the pay and allowances of the employees of unaided minority Schools cannot be less than those of the employees of the Government run Schools. There is no dispute that the benefits of 6th and 7th CPC have been given to the employees of the Government run Schools. If that be so, the employees of the unaided minority Schools are also entitled to get the benefits of the recommendations as made by the 6th and 7th CPC reports. So, this plea of Mr. Abinash Kumar Mishra is liable to be rejected. The plea of Mr. Mishra, that till such time the DoE grants approval to the Schools to collect the arrears of fees, the Schools must not be directed to pay the benefits of 7th CPC is concerned, the same is unmerited. The employees are entitled to equal pay and other benefits, by operation of Section 10 of the DSE Act, in other words,*

by operation of law, the said benefits are payable. The same does not pre-suppose the approval being granted by the Director to the Schools to claim higher fee or arrears thereof.

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28. Following the aforesaid judgment, even this Court in the case pertaining to grant of arrears of salary also granted similar reliefs to the petitioners in Shashi Kiran v. Siddharth International Public School, W.P.(C) No. 2734/2021; Rambir Singh Malik v. Greenfields Public School, W.P.(C) 9486/2020; and Inderpreet Kaur v. Directorate of Education, W.P.(C) 4127/2020. This Court in a recent judgment in the case of Amrita Pritam v. S.S. Mota Singh Junior Model School, W.P.(C) 1335/2019 dated September 22, 2021 has granted the benefits of the 7th CPC along with arrears to the petitioners therein. I may state here that an appeal has been preferred against the said judgment being S.S. Mota Singh Junior Model School v. Directorate of Education, Government of NCT of Delhi LPA 399/2021, however, the Division Bench has not stayed operation of the judgment in W.P.(C) 1335/2019 dated September 22, 2021. That apart, I find despite giving an undertaking to this Court and also this Court passing orders from time to time, unfortunately the benefits of the 6th CPC have not been granted. This Court is of the view that, apart from the undertaking given and also in view of the orders passed in the petitions referred to above, the petitioners are entitled to the benefits of the 6th and 7th CPC in law as well.

29. Accordingly, these writ petitions need to be allowed and the respondent/DSGMC/GHPS Society/GHPS are directed to, re-fix the salaries and other emoluments of the petitioners under 6th and 7th CPC in accordance with the rules. It is made clear that the DSGMC/GHPS Society shall ensure the compliance of the orders passed by this Court. I take note of the submission made by Mr. Misra that neither DSGMC nor the GHPS Society in any case have any statutory liability under the provisions of the DSE Act/Rules to grant the benefits of the 6th and 7th CPC but the fact remains that the DSGMC was being represented by their functionaries in these proceedings and even the undertakings were given on behalf of DSGMC in the proceedings before this Court and as such cannot absolve itself, from ensuring that the benefits of the 6th and 7th CPC are given to the petitioners. This direction is in the facts of the cases more specifically where the claim of the petitioners is with regard to the grant of the benefit under the 6th and 7th CPC and connected issues. The petitioners shall also be entitled to arrears of pay in view of fixation of their pay under the 6th and 7th CPC, upto the date of payment subject to adjustment of salary already paid.

30. The arrears thereof under the 6th CPC shall be paid to the petitioners with interest at the rate of 6% per annum. The arrears of 7th CPC shall not carry any interest. The fixation of pay and arrears shall be made/paid within a period of six months from today. All retiral benefits shall also be fixed and released to the petitioners, who have retired from their service within six months from today. As

> *an immediate assistance, the respondents/DSGMC/GHPS Society/ GHPS shall release an amount of Rs. 5 Lacs to each of the retirees within one month, subject to adjustment at the time of full payment. It is made clear that the failure to pay the amounts within six months as directed above shall entail payment of a higher interest of 9% per annum on the arrears of both 6th and 7th CPC and retiral benefits.*
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> *31. On the issue of grant of transport allowance/dearness allowance, the DoE in consultation of the GHPS in which petitioners, who sought such relief are working shall pass order, by considering the orders in the cases being CONT. CAS.(C) 46/2016 dated January 09, 2017 and in W.P.(C) 2132/2011 dated March 06, 2013 and instructions, if any, and convey the decision to those petitioners, within 10 weeks from today. Similarly, the claim of some petitioners for MACP in W.P.(C) 6407/2018, W.P.(C) 11152/2019 and W.P.(C) 12006/2019 shall be decided by the DoE in consultation with the GHPS in which the petitioners, who sought such relief are employed and convey the same to those petitioners, within 10 weeks from today. If the benefits are payable, the same shall be released to the petitioners within six months thereafter."*

8. It is undisputed that Petitioner was appointed on 07.07.1979 and having rendered over 37 years of service, she is entitled to gratuity. However, since a sum of Rs.10,00,000/-, which is the maximum amount admissible under the Payment of Gratuity Act, 1972 for 2017 retiree, has admittedly been received by the Petitioner, nothing further is payable towards gratuity.

9. The writ petition is accordingly allowed directing the School to refix the salary and emoluments of the Petitioner in accordance with the 7th CPC recommendations embodied in CCS (Revised Pay) Rules, 2016. Arrears of the salary and emoluments shall be paid within a period of six months from today. Decision on payment of TA/DA shall be taken by the School in accordance with the directions issued in the judgment of ***Shikha Sharma (supra).*** In case the arrears are not released within the time granted by the Court, interest @ 9% p.a. shall be paid by the School till the actual date of payment.

10. Writ petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

JANUARY 31, 2023/shivam/kks

Signature Not Verified
Digitally Signed By:KAMAL KUMAR
Signing Date:03.02.2023 19:13:29