



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

% **Date of order: 17th August, 2023**

+ **W.P.(C) 3117/2016 and CM.No. 14039/2016**

CONVENT OF JESUS AND MARY Petitioner

Through: **Ms.Ekta Mehta and Ms.Zainab Zaya Khan, Advocates**

versus

DIRECTOR OF EDUCATION AND ORS Respondents

Through: **Ms.Laavanya Kaushik, Advocate for R-1/DOE**

Mr.Amit Singh Narang, Advocate for R-2, 3,4,6 and 8

Mr.R.K.Aggarwal and Ms.Ayushi Bansal, Advocates for R-9

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner vide the present petition under Article 226 of the Constitution of India seeks the following reliefs:

“a. Issue a writ in the nature of mandamus or any other appropriate writ, order or direction quashing the order dated 28.08.2015 of the respondent no.1 directing payment of alleged arrears.

b. Award costs in favor of the petitioner.

c. Pass such other order(s) as this Hon'ble court may deem fit and proper.”



2. The factual matrix is reproduced herein below:
- a) The petitioner ('petitioner School' hereinafter) is an unaided recognized Christian minority School imparting education upto class XII and is governed by the provisions of the Delhi School Education Act & Rules, 1973, ('DSEAR Act, 1973' hereinafter) and is managed by the Jesus & Mary Delhi Educational Society. Respondent No.1 is the Director of Education ('respondent Director' hereinafter) and respondent Nos.2-9 ('respondent teachers' hereinafter) are teachers in the petitioner School.
 - b) The respondent Director vide circular dated 31st December, 2009 extended benefits of the Modified Assured Career Progression Scheme ('MACP' hereinafter) to the staff of aided schools under the Directorate of Education. The petitioner School being an unaided Christian minority school receiving no grant or aid from the Government also decided to grant MACP benefits to its staff.
 - c) The respondent teachers filed a Writ Petition bearing No. 1055/2013 against the petitioner School for the grant of benefits of Assured Career Progression Scheme (hereinafter 'ACP') & MACP Scheme including fixation and re fixation of pay in terms of the 5th and 6th Central Pay Commission (hereinafter 'CPC') with 24 percent interest per annum. The Coordinate Bench of this Court vide order dated 19th September, 2014 disposed of the aforementioned Writ Petition and directed the respondent Director to examine the records



of the petitioner School regarding payments made and amounts payable to the respondent teachers, if any.

- d) The respondent Director in compliance with the order passed by the Coordinate Bench of this Court, conducted a hearing regarding the amount payable on 30th October, 2014 which was attended by the representatives of the petitioner School as well as the respondent teachers. The main issue discussed in the said hearing was regarding grant of benefits of ACP and MACP schemes and also the consequential benefits including fixation and re-fixation of pay in terms of the 5th & 6th CPC recommendations.
- e) The respondent Director in its final order dated 28th August, 2015 observed that the issue for implementation of MACP Scheme to private unaided schools is yet to be decided by the Delhi School Education Advisory Board. However, the respondent Director referred to the available records and determined the amount of arrears as under-

S No.	Name of the Petitioner	Amount Due	Amount Drawn	Difference
1.	Ms. Deepa Joshi	Rs.67,06,173/-	Rs.66,43,641/-	Rs.1,57,240/-
2.	Ms. Sunanda Bhasker	Rs.54,42,825/-	Rs.2,69,934/-	Rs.1,72,891/-
3.	Ms. Renuka	Rs.54,42,825/-	Rs.52,69,934/-	Rs.1,72,891/-
4.	Ms. Pratima Saxena	Rs.72,14,687/-	Rs.68,34,633/-	Rs.3,80,054/-



5.	Ms. Urvanshi Punj	Rs.54,04,712/-	Rs.53,12,810/-	Rs.91,902/-
6.	Sh. Amar Jyoti	Rs.49,32,428/-	Rs.54,66,188/-	Rs.5,33,760/- (recoverable)
7.	Ms. K. Jaya	Rs.67,06,173/-	Rs.66,43,641/-	Rs.62,532/-
8.	Sh. Satish Kr. Bhardwaj	Rs.50,56,341/-	Rs.47,07,975/-	Rs.3,56,142/-

- f) The respondent Director vide order dated 28th August, 2015 directed the Management of the petitioner School to pay arrears as stated above to the respondent teachers within one month from the date of receipt of this order or in the shortest possible time after informing the respondent teachers the cause of delay.
- g) Aggrieved by the order passed by the respondent Directorate, the petitioner School filed the instant Writ Petition.
3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner School being a minority unaided school is not bound to implement the ACP and MACP Scheme in their school. It is also submitted that the ACP and MACP schemes are an exception to the recommendations of the CPC in the matter of pay fixation and in any event do not extend to minority unaided schools.
4. It is submitted that financial upgradations under the MACP scheme ought to be given based on performance, professional fitness and efficiency of the teacher. It is also submitted that the grant of MACP benefits to



respondent No.6 and 7 were deferred by the school on account of poor Annual Confidential Report consecutively for five years and two years respectively.

5. It is also submitted that the financial upgradations contemplated under the ACP/MACP scheme and implementation of the 6th CPC recommendations will have huge financial implications on the finances of the petitioner School.

6. It is further submitted that Article 19(1)(g) of the Constitution of India protects the right to practice any profession or to carry on any occupation, trade or business in the country. The petitioner School being a private unaided school has a right under Article 19(1)(g) to manage their own affairs without any intervention from the Directorate of Education.

7. It is submitted that as per the impugned order dated 28th August, 2015, the amount directed to be paid to respondent No.2-9 is unilateral and contrary to the notification of the respondent Director regarding applicability of MACP/ACP schemes only to aided schools.

8. Therefore, in view of the foregoing submissions, the petitioner seeks this Court be pleased to allow the present petition.

9. *Per contra*, the counsel appearing on behalf of the respondent Director vehemently opposed the present Writ Petition submitting to the effect that the same is not maintainable since the petitioner School is obligated to pay the respondent teachers as per the order dated 28th August, 2015 passed by Directorate of Education.



10. It is further submitted that there was no dispute with regard to implementation of 5th and 6th CPC by the petitioner School and the present petition is filed merely to open the order 19th September, 2014. Hence, the instant petition is not maintainable.

11. The learned counsel appearing on behalf of the respondent teachers vehemently opposed the present Writ Petition submitting to the effect that the same is not maintainable as the petitioner School is bound by the terms of Section 10 of DSEAR Act, 1973 and with respect to the circular dated 11th February, 2009 issued by respondent Director to pay teachers as per the 6th CPC.

12. It is also submitted that the petitioner School vide letter dated 6th March, 2010 enhanced the tuition fees for students specifically to cover the salary and arrears payable to teachers and other employees as per the 6th CPC.

13. It is further submitted that the Comptroller Auditor General has enquired into the accounts of the petitioner school wherein, the petitioner School is found to have Rs.8.24 Crores as surplus funds as on 31st March, 2009. It is submitted that the school will not face any hardship by payment of MACP and ACP to respondent teachers.

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

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



16. It is the case of the petitioner that the petitioner School being a minority unaided school is not bound to implement the ACP and MACP Scheme in their school.

17. The respondent in its rival submissions has stated that the present petition is not maintainable as the petitioner School is bound to pay monetary benefits to teachers as per the 6th CPC in accordance with Section 10 of DSEAR Act, 1973 and the circular dated 11th February, 2009 issued by the respondent Directorate.

18. The respondent also submits that the petitioner School has enhanced the tuition fees for students *vide* letter dated 6th March, 2010 especially to pay teachers and other employees as per the 6th CPC recommendations.

19. In view of the abovementioned facts and circumstance, the question for adjudication before this Court is that whether this Court can issue a Writ of Mandamus quashing the order dated 28th August, 2015 passed by the respondent Director. Before adjudicating, it is imperative to discuss the relevant provisions of law.

20. It is pertinent to mention that the petitioner School is recognized under the DSEAR Act, 1973 & governed by the Directorate of Education. It is an admitted fact that the respondent School is a minority unaided school, however, is well within the bounds of the DSEAR Act, 1973 and is legally obliged to implement the orders or directions given by the respondent Director. Section 10(1) of the DSEAR Act, 1973 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: 8 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.”

21. The language of the provision is clear and entitles the employees working in the private unaided school 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.”

22. As per the aforementioned provision and Rule, it is amply clear that the same rules are applicable to both employees of minority unaided school and employees at the Government School. Treatment of the teachers of a private recognized school at par with their government has been settled by this Court in a catena of judgments.

23. In ***Bharat Mata Saraswati Bal Mandir Senior Secondary School v Vinita Singh***, 2023 SCC OnLine Del 3934, the Coordinate Bench of this Court affirmed equal treatment of employees of the private school with that of those employed in the government schools and held as under:

“13. To conclude, it is reiterated that the reliefs claimed by the respondents in the writ petition were for payment of full salary as per recommendations of 7th CPC. Section 10 of the DSE Act provides that the scale of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of a recognized private school shall not be less than those of the employees of the corresponding status in the government school. The DOE in accordance with the DSE Act,



1973 has issued notification dated 17th October, 2017 directing that all recognized schools shall implement the recommendations of 7th CPC. In view thereof, it is the undisputed position of law that teachers of unaided private schools are entitled to the same pay and emoluments as those of government schools, in terms of the obligation enjoined upon the private recognized schools under the DSE Act, 1973. The schools cannot evade their statutory responsibility and are bound to pay the statutory dues.”

24. In light of the aforementioned judicial precedent and Section 10 of the DSEAR Act, 1973 provides that teachers of unaided private schools are also entitled to the same pay and benefits 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. Now dealing with issue whether petitioner school despite being in a financial crunch is still liable to pay teachers as per 5th & 6th CPC.

25. The respondent Director 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 the date of such notification. Moreover, the respondents submitted that the financial report published by the Comptroller and Auditor



General of India depicts a surplus of Rs. 8.24 Crores with the petitioner School in the year 2009.

26. On the contrary, the petitioner has submitted that petitioner School is a minority unaided school and the implementation of ACP/MACP scheme and of 6th CPC recommendations will have huge financial implications on the finances of the school.

27. It 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 to decide the issue of arrears.

28. The above said principle has been reiterated by the Hon'ble Supreme Court in ***Frank Anthony Public School Employees' Assn. v. Union of India, (1986) 4 SCC 707*** 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.

29. In the present facts, the respondent teachers being employees of the private unaided schools are entitled to the salary and benefits under the recommendations of the 6th CPC. Section 10 of the DSEAR Act, 1973 being the settled position of law requires the petitioner School to give the salaries and benefits to its employees equivalent to their counterparts working in the Government schools despite facing a financial difficulty.

30. This Court is of the view that 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 6th CPC recommendations, the respondent School's justification cannot be considered valid for withholding salaries and arrears that have been pending till date.

31. In view of the above discussion of facts and law, this Court finds no infirmity in the impugned order dated 28th August, 2015 passed by Director of Education i.e. respondent No. 1 in compliance with order dated 19th September, 2014 passed by a Coordinate Bench of this Court in Writ Petition bearing No. 1055/2013.



32. Consequently, this Court is of the view that the instant Writ Petition has no merits and therefore, has been dismissed along with pending applications, if any.

33. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 17, 2023
SV/DB

Click here to check corrigendum, if any