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

% Judgment delivered on: 14.03.2024

+ **W.P.(C) 3779/2024****KIRPAL SINGH**

..... Petitioner

versus

GURU HARKRISHAN PUBLIC SCHOOL AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Prashant Kumar and Mr. Nikhilesh Kumar, Advocates.

For the Respondents : Mr. Abinash K. Mishra and Mr. Gaurav K. Pandey, Advocates for R-1.
Ms. Latika Choudhury, Advocate for R-2.

CORAM:**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****J U D G M E N T****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]****CM APPL. 15557/2024 (for exemption)**

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. This is a writ petition under Article 226 of the Constitution of India, 1950, seeking *inter alia* the following reliefs:-



“(a) Issue a writ of mandamus, order or direction, directing the Respondent No. 1 & 2 to release the terminal benefits i.e. gratuity and leave encashment in terms of 6th & 7th CPC, along with interest till realization;

b) Issue a writ of mandamus, order or direction, directing the Respondent No.3 to initiate action against the Respondent Nos. 1 & 2 for withholding the terminal benefits of the Petitioner without any rhyme and reason;

c) Pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

4. Issue Notice.

5. Notice is accepted by Mr. Abinash K. Mishra, learned counsel appearing for respondent No.1 and by Ms. Latika Choudhury, learned counsel appearing for respondent No.2.

6. Mr. Mishra, learned counsel appearing for respondent No.1 very fairly submits that the issue raised in the present petition is squarely covered by the judgment of the Co-ordinate Bench of this Court in W.P.(C) 14597/2022 captioned as ***“Jasvinder Singh vs. Directorate of Education & Ors.”***.

7. He also relies upon the judgment of another Co-ordinate Bench of this Court in ***“Shikha Sharma vs. Guru Harkishan Public School,*** reported in **2021 SCC OnLine Del 5011”**.

8. The judgment rendered by the Co-ordinate Bench of this Court in *Shikha Sharma (supra)* has been succinctly noted in para 5 of the judgment passed in *Jasvinder Singh (supra)*. The same is extracted hereunder :-

“5. Having heard the counsels appearing for both parties, this Court is of the opinion that the instant petition is



squarely covered by Shikha Sharma (Supra), relevant paragraphs of the same are reproduced herein:

“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 OF THE CODE OF CIVIL PROCEDURE, 1908 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 This is a digitally signed order. The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2024 at 14:10:49 not carry any interest. The fixation of pay and arrears shall be made/paid within a period of six months from today.

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.”

9. In view of the aforesaid, the petition is allowed, the directions, as contained in para 6 of the judgment in *Jasvinder Singh (supra)* is as under and be implemented within six months :-

“6. In light of the aforementioned discussions of facts and the settled law, this Court, in regard to the issue pertaining to TA/DA, hereby issues the following directions for redressal of the petitioners’ grievances:

a. The DoE shall in consultation with GHPS, pass an order on the issue of grant of transport and dearness allowance due to the petitioners’ in terms of 6th and 7th Pay Commission Report, as applicable.



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b. The DoE shall convey about the decision taken by it in consultation with GHPS to the petitioners herein, within 10 weeks from today.

c. In the event it is found that the benefits as sought by the petitioners are payable, the same shall be released to the petitioners within six months thereafter.

d. Petitioners will be entitled to interest @ 6% per annum during the pendency of this petition and till the arrears are paid.”

10. The judgments handed over the Bench are taken on record
11. The petition along with pending application stands disposed of.

TUSHAR RAO GEDELA, J.

MARCH 14, 2024/nd