



2024:DHC:9977



\$~

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

%

Date of Decision: 24th December, 2024

+

W.P.(C) 12419/2021 and CM APPLs. 39045/2021 and 56229/2022

LAKSHMI SETHI AND ORS

.....Petitioners

Through: Mr. Ashok Agarwal, Mr. Kumar
Utkarsh, Mr. Manoj Kumar and Ms. Ashna Khan,
Advocates.

versus

DARBARI LAL DAV MODEL SCHOOL & ORS.....Respondents

Through: Mr. Anurag Lakhotia, Advocate for
R1 and R2.

Mr. Sujeet Kumar Mishra and Mr. Sanyam,
Advocates for R3.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. Present writ petition has been filed by the Petitioners under Article 226 of the Constitution of India for a direction to Darbari Lal DAV Model School/Respondents No.1 and 2 (hereinafter referred to as 'School') to revise and re-fix the pay of the Petitioners as per recommendations of 7th Central Pay Commission (CPC) w.e.f. 01.01.2016 along with arrears and interest @ 24% per annum as also for a direction to pay Dearness Allowance (DA) at the declared rates and as revised from time to time by the Government of NCT of Delhi (GNCTD). Direction is also sought to the School to regularly issue salary slips to the Petitioners.



2. Petitioners are serving employees of the School and were appointed on different dates and on different posts. Petitioner No. 4 namely, Ms. Dolly Takkar has expired and her legal representative was brought on record. Tabular representation indicating the required details of the Petitioners is as follows:-

<i>Petitioner No.</i>	<i>Name of the Petitioner</i>	<i>Date of Appointment</i>	<i>Designation</i>
1	Lakshmi Sethi	01.04.2013	Librarian
2	Arun Kukreja	16.08.1989	PGT Physics.
3	Kusum Dua	15.07.1987	PRT
4	Virender Singh Takkar, legal representative of Late Dolly Takkar	05.07.1993	PRT
5	Veena Das	04.07.1997	PRT
6	Shabnam Jain	01.07.1996	PRT
7	Sunita Lal	05.07.1982	PRT
8	Rupali Sharma	04.07.1997	PRT
9	Kapil Sejwal	04.07.2005	PRT
10	Shilpi Debnath	04.07.1997	PRT Science
11	Priti Sharma	01.07.2003	PRT
12	Sonam Bansal	04.07.2005	PRT
13	Vandana Bansal	06.10.2001	PRT
14	Vimmi Chaudhry	05.07.1993	PRT English
15	Mona Bhattacharjee	05.07.1993	PRT
16	Kanchan Sharma	04.07.1997	PRT



2024:DHC:9977



17	Archana Soperna	01.04.2004	PRT
18	Bhawna Kapoor	04.07.1997	PRT
19	Savita Mehra	01.07.1995	PRT (Currently, TGT)
20	Kiran Sharma	04.07.1997	PRT
21	Ranjit Kumar Roy	12.07.1990	LAB Attendant (Currently, Lab Assistant)
22	Dinesh Kumar Chauhan	01.11.1993	LAB Attendant (Currently, Lab Assistant)
23	Jagdish Prasad Maurya	10.07.1991	LAB Attendant (Currently, Lab Assistant)
24	Tankesh Kumar	10.07.1991	LAB Attendant (Currently, Lab Assistant)
25	Birender Kumar Badola	05.07.1993	LAB Attendant (Currently, Lab Assistant)
26	Parul Gupta	01.07.1996	PRT
27	Roomy Talwar	01.07.1995	PRT



28	<i>Ritu Jain</i>	<i>01.07.1996</i>	<i>PRT Computer Science (Currently, TGT Computer Science)</i>
29	<i>Simmi Taneja</i>	<i>04.07.1997</i>	<i>PRT (Science)</i>
30	<i>Vandana Aneja</i>	<i>01.07.1996</i>	<i>PRT Computer Science (Currently, TGT Computer Science)</i>
31	<i>Janak Singh Rana</i>	<i>10.07.1991</i>	<i>LAB Attendant (Currently, Lab Assistant)</i>

3. Case of the Petitioners is that the School is governed by provisions of the Delhi School Education Act and Rules, 1973 (DSEAR) and in terms of Section 10(1) of Delhi School Education Act, 1973, Petitioners are entitled to scales of pay and allowances at par with employees of corresponding status in schools run by GNCTD. Central Pay Commissions' recommendations have been adopted by GNCTD from time to time including 7th CPC, but despite passage of over 8 years from the date when 7th CPC recommendations were given effect to, pay and allowances of the Petitioners have not been revised and arrears are outstanding w.e.f. 01.01.2016. DoE has issued several circulars/orders directing all private recognised schools to implement the recommendations of Pay Commissions and revise the salary and allowances but the School is totally non-compliant with the said directions. Petitioners also complain that they are entitled to DA at the current rates but the School has been giving DA at a rate which is



one step below. Petitioners urge that salary slips have not been issued from April, 2021 and thus they are in the dark on the exact components of pay they are receiving and seek directions to the School to issue the salary slips.

4. Learned counsel for the Petitioners contended that the School cannot absolve itself of the liability to carry out pay revision under 7th CPC as this is a statutory obligation under Section 10(1) of DSEAR. Being a recognised private school, the School is under a mandate to fix the scales of pay and allowances as well as grant pension/gratuity etc. at par with employees of corresponding status in the schools run by GNCTD and this legal proposition is no longer *res integra*. Reliance was placed on the judgments of this Court in :-

- a. Omita Mago and Others v. Ahlcon Public School and Another, 2022 SCC OnLine Del 5020;*
- b. Shikha Sharma v. Guru Harkrishan Public School & Ors, 2021 SCC OnLine Del 5011;*
- c. Amrita Pritam and Others v. S.S. Mota Singh Junior Model School and Others, 2021 SCC OnLine Del 4470;*
- d. Kuttamparampath Sudha Nair v. Managing Committee Sri Sathya Sai Vidya Vihar and Another, 2021 SCC OnLine Del 2511*
- e. Ahlcon Public School v. Omita Mago and Ors., 2023 SCC OnLine Del 368;*
- f. Meenu Sachdev v. Managing Committee Sri Sathya Sai Vidya Vihar & Anr., decided on 14.12.2022, W.P. (C) No. 2353/2022;*
- g. Mukesh Kumar Verma v. Lions Public School and Others, 2022 SCC OnLine Del 5129; and*
- h. Bala Rani Bhatia v. Directorate of Education and Others, 2024 SCC OnLine Del 6948.*

5. It was further argued that Directorate of Education ('DoE') has issued many circulars/orders from time to time including order dated 25.08.2017, in



exercise of powers conferred under Sections 17(3), 18(4) and (5) and 24(3) read with Rules 50, 51, 177 and 180 of DSEAR, directing Managing Committees of all private aided/unaided recognized schools to implement the Central Civil Services (Revised Pay) Rules, 2016 ('2016 Rules'), but there is total inaction on the part of the School. None of the three defences viz: (a) delay and laches; (b) paucity of funds; and (c) no fee hike, taken by the School to deny revision of pay under 7th CPC are tenable in law. Insofar as the alleged paucity of funds is concerned, on a factual note this is a false stand as the School has enough funds and assets to release the arrears and fulfil the statutory obligation and in any case, the Supreme Court and this Court have negated this contention in a number of judgments holding that financial crunch cannot be a ground to deny benefits of pay revision under the recommendations of Pay Commissions. Doctrine of delay and laches cannot be taken as a shield to deny pay revisions and as per settled law even arrears cannot be restricted as implementation of Pay Commission's recommendations is a statutory obligation. Counsel contended that Fee hike cannot be linked to pay revision by the School *albeit* as a matter of fact and record, School has enhanced the fee three times in the last few years, for which supporting documents were handed over by the learned counsel during the hearing. To fortify the legal plea, reliance was placed on the judgements of this Court in *Omita Mago (supra)* and *Rukmini Devi Jaipuria Public School v. Sadhna Payal and Others, 2012 SCC OnLine Del 6535*.

6. *Per contra*, Mr. Anurag Lakhotia, learned counsel appearing on behalf of the School, at the outset, raised an objection to the maintainability of the writ petition on ground of delay and laches and argued that Petitioners



are seeking revision of pay as well as arrears w.e.f. 01.01.2016 under 7th CPC but there is no explanation for the gross delay in approaching the Court in the year 2021. It was argued that Courts aid those who are vigilant and not those who sleep over their rights. Under the Limitation Act, 1963, a suit for recovery of money can only be filed within 3 years from the date of cause of action and thus a writ Court cannot and should not grant a relief which is barred under the Limitation Act. Present writ petition is for recovery of arrears of salaries and is barred by limitation and should be dismissed on this ground alone. To fortify his stand, learned counsel relied on the judgment of the Division Bench of this Court in ***Ritika Sharma v. DAV Public Primary School & Ors., LPA No. 32/2021***, decided on 22.01.2021, wherein it was held that writ jurisdiction cannot be invoked for recovery of dues, particularly, if the same are otherwise barred by limitation. Any judgment which holds that law of limitation or doctrine of delay and laches will not apply to claims of pay revision will be contrary to the judgments on this issue in ***M.R. Gupta v. Union of India and Others, (1995) 5 SCC 628***; ***Union of India and Others v. Tarsem Singh, (2008) 8 SCC 648***; ***State of Orissa and Another v. Mamata Mohanty, (2011) 3 SCC 436***; and ***Rushibhai Jagdishbhai Pathak v. Municipal Corpn., Bhavnagar, (2022) 18 SCC 144*** and of this Court in ***Kirti Jain v. Kulachi Hansraj Model School & Others, 2018 SCC OnLine Del 13221***, and will be *per incuriam*.

7. It was argued that the School runs under the aegis of DAV College Management Committee, which has been successfully running and managing schools from the 19th century with a goal to provide best education to the children and is a recognised private and unaided school.



School has cleared arrears of pay revision under the 6th CPC and is fully conscious of its obligations towards its employees including teachers. School is no doubt under an obligation to implement recommendations of Pay Commissions including 7th CPC, however, DoE is equally bound to permit fee hike every year so that funds can be collected by the School and pay revisions can be carried out. Earlier DoE was issuing circulars permitting fee enhancement, but in the year 2017, the circulars permitting fee hike were withdrawn. On account of the School not being able to enhance the fee coupled with several factors such as increase of staff manifold between 2016 and 2022 as well as exponential increase in the expenditure due to increase in maximum limit of gratuity from Rs.10 lakhs to Rs. 20 lakhs etc., School is unable to bear the financial burden of releasing the arrears of 7th CPC. School has challenged the decision of DoE with respect to fee hike in W.P. (C) 8073/2019, which is pending and has a direct bearing on the present writ petition and therefore, this Court should await the outcome of the decision in the said petition.

8. Learned counsel strenuously urged that the interplay between the statutory right of a private unaided school to enhance the fee and statutory duty to revise salaries is fundamental and one cannot be divorced from the other and this position is recognised by the Supreme Court in ***Greenfields Public School v. Anchla & Ors., SLP (C) 543/2024***, wherein vide order dated 02.01.2024, the Supreme Court has stayed the direction of the Division Bench to release arrears passed in LPA No. 567/2023 upholding the order of the learned Single Judge in W.P. (C) 6521/2021, subject to deposit of 25% of the arrears and the neat legal issue raised before the Supreme Court is that there is a direct link between the fee hike and



payment of revised salaries under recommendations of Pay Commissions. Further, in *Anjali Vaid and Others v. Adarsh World School and Others, 2023 SCC OnLine Del 7423*, decided along with the batch of petitions, considering that the School did not have money to pay revised salaries, this Court has directed constitution of an independent High Powered Committee to scrutinise various aspects including revision of fees *albeit* paragraphs 200, 204 and 205 have been stayed by the Division Bench in LPA No. 830/2023, decided on 18.12.2023.

9. Learned counsel appearing on behalf of DoE supported the case of the Petitioners and submitted that the School is an unaided private school recognised by DoE under provisions of DSEAR and Managing Committee of the School is bound to comply with its provisions as well as the circulars issued by DoE from time to time. It was urged that the School is under a statutory mandate to comply with Section 10(1) of DSEAR which mandates that employees of recognised private schools shall not be paid scales of pay and other benefits lesser than those of employees of corresponding status in schools run by GNCTD. In furtherance of this statutory mandate, DoE has issued various orders directing both aided and unaided private recognised schools to ensure implementation of 7th CPC recommendations and in this context referred to orders/circulars dated 25.08.2017, 09.10.2019 and 18.04.2020 and relied on the judgement of this Court in *Lata Rana v. D.A.V. Public School and Others, 2018 SCC OnLine Del 11254*, wherein the Court directed the Respondent School to release arrears of revised pay under the 6th and 7th CPCs, in view of Section 10(1) of DSEAR. Reliance was also placed on the judgement in *Rukmini Devi Jaipuria Public School (supra)*, wherein the Division Bench observed that mere financial burden



cannot be a reason enough to absolve the school of its obligation to implement Pay Commission's recommendations. Relying on the judgments of this Court in ***Kuttamparampath Sudha Nair (supra)*** and ***Shikha Sharma (supra)***, it was urged that it is not open to a private recognised school to take an exception to the statutory obligation under Section 10(1) of DSEAR.

10. I have heard the learned counsels for the parties and examined their respective contentions.

11. The neat legal nodus that arises in this writ petition is whether Petitioners can be denied pay revision under 7th CPC as also DA at the prevailing rates notified by the Government from time to time. In my view, it is no longer *res integra* that Section 10(1) of DSEAR casts a statutory obligation on Management Committee of every recognised private school, both aided and unaided, to ensure that its employees are not paid scales of pay and allowances as well as medical facilities, pension/gratuity etc. lower/lesser than those paid to employees of corresponding status in schools run by GNCTD. This Court in ***Kuttamparampath Sudha Nair (supra)***, examined the vexed question of applicability of Section 10(1) of DSEAR to private recognized unaided schools and held as under:

“20. The issue of applicability of Section 10(1) and other provisions of Chapter IV of the DSEA&R to unaided minority schools came up for consideration before the Supreme Court in Frank Anthony (supra) and the Supreme Court set aside the pre-existing Section 12, which had excluded the application of Section 10(1) and other provisions to the unaided minority schools. The Supreme Court also considered whether applying Section 10(1) would have the impact of eroding the minority character of the schools which entitles them to a Constitutional protection under Article 30(1) and held that it did not. The Supreme Court had observed that excellence of every school, aided or unaided, would depend upon the quality of its teachers and therefore, provisions like Section 10(1) mandating payment of salary and allowances cannot be characterized as unreasonable even in respect unaided minority institutions.



21. *The judgment was followed in several cases and was also relied upon by the eleven-Judge Bench of the Supreme Court in T.M.A. Pai (supra). Relevant paras of the judgment in Frank Anthony (supra) are as follows:—*

“20. Thus, Sections 8(1), 8(3), 8(4) and 8(5) do not encroach upon any right of minorities to administer their educational institutions. Section 8(2), however, must, in view of the authorities, be held to interfere with such right and, therefore, inapplicable to minority institutions. Section 9 is again innocuous since Section 14 which applies to unaided minority schools is virtually on the same lines as Section 9. We have already considered Section 11 while dealing with Section 8(3). We must, therefore, hold that Section 12 which makes the provisions of Chapter IV inapplicable to unaided minority schools is discriminatory not only because it makes Section 10 inapplicable to minority institutions, but also because it makes sections 8(1), 8(3), 8(4), 8(5), 9 and 11 inapplicable to unaided minority institutions. That the Parliament did not understand Sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article 30(1) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article 30(1) is the price which the aided minority institutions have to pay to obtain aid from the government.”

21. The result of our discussion is that Section 12 of the Delhi School Education Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void except to the extent that it makes Section 8(2) inapplicable to unaided minority institutions. We, therefore, grant a declaration to that effect and direct the Union of India and the Delhi Administration and its officers, to enforce the provisions of Chapter IV [except Section 8(2)] in the manner provided in the chapter in the case of the Frank Anthony Public School. The management of the school is directed not to give effect to the orders of suspension passed against the members of the staff.

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.”

22. Relevant paras of the judgment in *T.M.A. Pai (supra)* are as follows:—

“124. In Lily Kurian v. Sr. Lewina [(1979) 2 SCC 124 : (1979) 1 SCR 820] this Court struck down the power of the Vice-Chancellor to veto the decision of the management to impose a penalty on a teacher. It was held that the power of the Vice-Chancellor, while hearing an appeal against the imposition of the penalty, was uncanalized and unguided. In Christian Medical College Hospital Employees' Union v. Christian Medical College Vellore Assn. (1987) 4 SCC 691 this Court upheld the application of industrial law to minority colleges, and it was held that providing a remedy against unfair dismissals would not infringe Article 30. In Gandhi Faiz-e-am College v. University of Agra (1975) 2 SCC 283 a law which sought to regulate the working of minority institutions by providing that a broad-based management committee could be reconstituted by including therein the Principal and the seniormost teacher, was valid and not violative of the right under Article 30(1) of the Constitution. In All Saints High School v. Govt. of A.P. (1980) 2 SCC 478 a regulation providing that no teacher would be dismissed, removed or reduced in rank, or terminated otherwise except with the prior approval of the competent authority, was held to be invalid, as it sought to confer an unqualified power upon the competent authority. In Frank Anthony Public School Employees' Assn. v. Union of India (1986) 4 SCC 707 the regulation providing for prior approval for dismissal was held to be invalid, while the provision for an appeal against the order of dismissal by an employee to a tribunal was upheld. The regulation requiring prior approval before suspending an employee was held to be valid, but the provision, which exempted unaided minority schools from the regulation that equated the pay and other benefits of employees of recognized schools with those in schools run by the authority, was held to be invalid and violative of the equality clause. It was held by this Court that the regulations regarding pay and allowances for teachers and staff would not violate Article 30.”

(emphasis supplied)



23. *The issue again came up before the Supreme Court in Raj Soni v. Air Officer Incharge (Administration), (1990) 3 SCC 261 where the Supreme Court reiterated and re-affirmed the inflexible nature of the liability that was binding on a recognized school under the provisions of the DSEA&R and significant would it be to note that the Supreme Court categorically held that recognized private schools in Delhi, whether aided or otherwise, are governed by the provisions of DSEA&R. Relevant para of the judgment is as under:—*

“11. The recognized private schools in Delhi whether aided or otherwise are governed by the provisions of the Act and the Rules. The respondent-management is under a statutory obligation to uniformly apply the provisions of the Act and the Rules to the teachers employed in the school. When an authority is required to act in a particular manner under a statute it has no option but to follow the statute. The authority cannot defy the statute on the pretext that it is neither a State nor an “authority” under Article 12 of the Constitution of India.”

24. *In P.M. Lalitha Lekha v. Lt. Governor in W.P. (C) No. 5435/2008 decided on 02.02.2011 although the question involved was counting of service of the Petitioner therein for computing her pension and in that context was different on facts, but the point of law was the same as the one arising in the present petition. Co-ordinate Bench of this Court examined the provisions of Section 10(1) of the DSEA&R and observed that the first proviso to Section 10(1) clearly obliges the DOE to direct the management of all recognized private schools to bring all benefits, including inter-alia pensionary benefits, to the same level as that of the employees of corresponding status of the schools run by the Director of Education. The second proviso enables the DOE to withdraw the recognition of the school under Section 4 of the DSEA&R in case the management fails to comply with the directions and serves a salutary purpose and empowers the DOE to issue directions aimed at fulfilling the object of Section 10(1) of the DSEA&R. It was also held that the mandate of Section 10(1) is unambiguous, regardless of whether the school receives grant-in-aid or not. It was also held that it must be kept in mind that the Delhi School Education Act contemplates unaided private schools also, as they are also granted recognition and therefore the mandate of Section 10(1) would apply to them with full rigour. Relevant paras of the judgment are as under:—*

“11. The first proviso to Section 10 of the Delhi School Education Act, 1973 clearly obliges the Director of Education to direct the management of all recognized private schools to rectify any deficiency and to bring all benefits, including, inter alia, pensionary benefits up to the same level as those of employees of corresponding status of the schools run by the Director of Education. The second proviso further



provides that in case the management of the school fails to comply with such directions, recognition of the school can be withdrawn under the powers given in S.4 of the Delhi School Education Act, 1973. This serves a salutary purpose and further empowers the Director of Education to issue appropriate directions aimed at fulfilling the object of Section 10(1) of the Act.

12. The school has been given certain privileges, including recognition, on condition, inter alia, that it complies with Section 10(1). Due to the non-compliance of the conditions by the respondent school the petitioner cannot be made to suffer. If the respondent school does not come forward to honor its employees' entitlement in this behalf, then, steps need to be taken by the appropriate authority to ensure compliance.

13. The payment of pension for the period before the grant-in-aid came into the picture has to be rendered by the school, but post such grant, the liability shifts to the respondent. This is because the mandate of Section 10(1) is unambiguous. Regardless of whether it receives grant-in-aid or not. So long as it is a recognized private school, pension and other benefits of its employees must be the same as those admissible to employees of the Authority's schools. Under the first proviso, it is the respondent's duty to ensure that such payment is made. Under the Second proviso the respondent can take action if those directions are not followed. The respondents in no circumstance can be absolved from their duty.

xxx

xxx

xxx

15. In this context, it must be kept in mind that the Delhi School Education Act contemplates unaided private schools also. Even such schools are granted recognition. The mandate of Section 10(1) applies with full rigour to them also."

(emphasis supplied)

25. Recently, a Division Bench of this Court in Dhanwant Kaur Butalia v. Guru Nank Public School in LPA 499/2013 decided on 14.01.2016 reiterated and re-enforced that Section 10(1) with its consequential resultant mandate that scales of pay, allowances, medical facilities, gratuity, etc., paid to the Government schools should be paid to employees of corresponding status in private recognized schools, would apply to all unaided schools. Section 10(1) is a statutory purity and also a minimum standard which all recognized schools have to adhere to.

26. In the appeal before the Division Bench, the Appellant was aggrieved by an order of the learned Single Judge whereby her claim for increase of salary, consequent to implementation of 6th CPC recommendation, was rejected. The Appellant invoked provisions of



Section 10(1) of DSEA&R and also relied on earlier judgments of this Court wherein it was consistently ruled that unaided schools have an obligation to ensure that emoluments of teachers and other employees are at par with those in the schools established and maintained by the appropriate Government. Judgments of this Court in Gurvinder Singh Saini v. Guru Harkishan Public School in W.P. (C) 12372/2009 decided on 02.09.2011, Deepika Jain v. Rukmini Devi Public School in W.P.(C) 237/2013 decided on 23.09.2013 and the judgment of Division Bench in Guru Harkishan Public School v. Gurvinder Singh Saini in LPA 58/2012 decided on 05.09.2012, were cited by the Appellant and taken note of by the Division Bench.

27. *As the issue before the Division Bench concerned benefits under 6th CPC, reliance was placed on the CCS (Revised Pay) Rules, 2008 and Office Memorandum dated 30.08.2008 referring to the said Rules. Based on this, a Circular was issued by the Competent Authority under the DOE on 15.10.2008, directing the managements of all private recognized (aided as well as unaided) schools to implement 6th CPC recommendations. After a conjoint reading of the circulars and the Pay Rules, the Division Bench held as follows:—*

“6. The Court also notices that the pre-existing Section 12 which had excluded the application of Section 10 and other provisions of the Chapter, to unaided minority schools was set aside by the Supreme Court in Frank Anthony School Employees Association v. Union of India (1986) 4 SCC 707 : AIR 1987 SC 311. The Supreme Court expressly considered the impact of Section 10 and whether it had the effect of eroding the minority character of schools entitled to protection under Article 30 and concluded that it did not. The said judgment has been constantly followed and it was not overruled but was approved in TMA Pai Foundation's case (supra). Section 10 with its consequential resultant mandate is that scales of pay, allowances, medical facilities, gratuity, provident fund “and other prescribed benefits” which employees of “corresponding status” in schools of the appropriate government are to be granted to employees of all unaided schools.

7. This ipso facto ought to clinch the case in favour of the present appellant. Section 10 is a statutory purity and also a minimum standard which all recognized schools have to adhere to.

xxx

xxx

xxx

10. The said office memorandum of 30.08.2008 also referred to the Central Civil Service Revised Pay Rules, 2008. The effect of all these office memoranda (dated 11.09.2008, 22.09.2008 and 15.10.2008) is that the managements of all private recognized schools aided as well as unaided had to implement the 6PC Recommendations, in the



manner stipulated by Section 10 of Delhi Education Act. Circular dated 15.10.2008 was categorical in this regard. It reads as under:

“Section 10(1) of Delhi School Education Act 1973 provides that:

“The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized private school shall not be less than those of the employees of the corresponding status in school run by the appropriate authority.”

Therefore, the Management of all private recognized, (Aided as well as unaided) schools are directed to implement the Sixth Pay Commission recommendations - fixation of pay and payment of arrears in accordance with circular no. 30-3(17)/Cood/Cir/2008 dated 22.09.2008 vide which it has been implemented in r/o employees of Government Schools.

This issue with prior approval of competent Authority.”

11. A co-joint reading of all circulars would immediately reveal that the 6PC recommendations were accepted and the Central Government formulated the revised pay rules with effect from 01.01.2006. The rules were published in 2008. Nevertheless, the entitlement following from it accrued to all with effect from 01.01.2006. The only exception was that certain types of allowances i.e. HRA, children's education allowance, special compensatory allowance etc. were to be paid prospectively with effect from 01.09.2008 (refer para 3 of OM dated 30.08.2008). In all other respects, the pay parity mandated for government of NCT teachers was to apply to teachers and staff members of unaided schools - minority and non-minority schools.

xxx

xxx

xxx

13. In the present case, Section 10 remains on the statute book; it was declared to be applicable to all unaided schools including minority schools, from 1986 onwards i.e. with the declaration of the law in Frank Anthony School Employees Association's case (supra). There is no dispute that the 6PC recommendations were to be implemented from the date the Government of NCT implemented it. Such being the case, the respondent school in the present case could not have claimed ignorance of application of Section 10 and stated that it was obliged to pay arrears or implement the 6PC recommendations with effect from the date later than that applicable in the case of Government of NCT teachers and teaching staff in its schools.

14. As a consequence and in the light of the previous order of this court in Gurvinder Singh Saini's case (supra) and Uma Walia's case (supra) the impugned order and judgment of learned Single Judge is



hereby set aside. The respondent is directed to disburse all the arrears of salary and allowances payable pursuant to 6PC recommendations - to the appellant except those expressly denied by virtue of the Central Government's Office Memorandum dated 30.08.2008, within six weeks from today."

28. *Contention of learned counsel for the School that Section 10(1) does not specifically include unaided private schools may seem attractive at the first blush, if one was to superficially look at the provisions of the Section, where the words used are 'recognized private school'. However, the contention cannot be accepted in view of the various judicial pronouncements where the provision of Section 10(1) has been interpreted to include both aided and unaided schools. The Division Bench in Dhanwant Kaur (supra) has clearly held that the mandate of Section 10(1) would apply to all unaided schools as the minimum standard that the provision ensures must be adhered to by all recognized schools.*

29. *In Dev Dutt Sharma v. Managing Society National Public School in W.P. (C) 11563/2009 decided on 02.07.2010, a Co-ordinate Bench of this Court pronounced that the mandate of Section 10(1) is unambiguous, regardless of whether the institution receives grant-in-aid or not. Since the Act itself contemplates unaided private schools for recognition, mandate will apply with full rigour to them. The Supreme Court in Frank Anthony (supra) held that impact of Section 10(1) would not have the effect of eroding the minority character of the Minority Institutions, who are entitled to protection under Article 30(1) of the Constitution of India.*

30. *Additionally, it may be noted that this is also the understanding of the DOE which is implicit in the various Circulars issued by them from time to time in this regard. Vide order dated 19.08.2016, DOE, in exercise of powers conferred under Sections 17(3), 24(3) and 18 of the Delhi School Education Act, 1973 read with Rules 50, 177 and 180 of the Delhi School Education Rules, 1973 adopted the CCS (Revised Pay) Rules, 2016, under which benefits of 7th Pay Commission are paid to the Government employees. Directions were accordingly issued by the DOE, vide Circular dated 17.10.2017 to all the unaided private recognized schools to extend the benefits of 7th CPC to its employees in accordance with Section 10(1) at par with the Government employees. By another order dated 09.10.2019, the DOE reiterated its directions to the unaided schools to comply with the mandate of Section 10(1), failing which necessary action shall be taken as per provisions of DSEA&R against the defaulting Schools. Relevant paras of the order dated 17.10.2017 are as under:—*

"In continuation of this Directorate's Order No. DE.15(318)/PSB/2016/18117 dated 25/08/2017 and In exercise of the powers conferred under action 17(3) and section 24(3), of the Delhi



School Education Act, 1973 read with sub sections 3, 4 and 5 of Section 18 of the Delhi School Education Act, 1973 and with rules 50, 177 and 180 of the Delhi School Education Rules, 1973 and in continuation of the previous orders No.DE. 15/Act/Duggal. Com/203/99/23039-23988 dated 15.12.1999, F.DE 15/Act/2K/243/ KKK/883-1982 dated 10.02.2005, E.15/Act/2006/738-798 dated 02.02.2006, relevant paras of F.DE/15 (56)/Act/2009/778 dated 11.02.2009, F.DE-15/ACT-I/WPC-4109/13/6750 dated 19.02.2016, F.DE-15/ACT-I/WPC-4109/PART/13/7905-7913 dated 16.04.2016 & F.DE/PSB/2017/16604 dated 03/07/2017, I, Saumya Gupta, Director of Education, hereby issue following directions to all the Unaided Private Recognized Schools in the National Capital Territory of Delhi for the implementation of 7th Central Pay Commission's Recommendations under Central Civil Services (Revised Pay) Rules, 2016 with effect from 01.01.2016.

xxx

xxx

xxx

2. Period of Implementation of 7th CPC

The benefits of 7th Central Pay Commission Recommendations have been implemented by the Govt. of India, Department of Expenditure, Implementation Cell, Ministry of Finance in a staggered manner. As per the notification dated 25/07/2016 issued by Govt. of India, Ministry of Finance, basic pay of the Govt. employee has been increased for the period 01/01/2016 to 30/06/2017 and increased allowances have been allowed to the Govt. employees w.e.f. 01/07/2017. Thus, in accordance with sub-section (1) of Section 10 of Delhi School Education Act, 1973, the benefits of the recommendations of 7th CPC to the employees of Private Unaided Recognized Schools of Delhi will also be extended in a similar manner."

xxx

xxx

xxx

33. The Court notes that the DOE has consistently taken a stand that the private recognized unaided schools are bound to comply with provisions of Section 10(1) and this is discernible from Circular dated 15.10.2008 issued by the DOE after the CCS (Revised Pay) Rules, 2008 were notified, pursuant to 6th CPC. The Circular was taken note of by the Division Bench in Dhanwant Kaur (supra) and is extracted in the earlier part of the judgement. This obviates any doubt that provisions of Section 10(1) of the DSEA&R shall apply to the Respondent/School and it is under a statutory obligation to pay the revised salaries and emoluments under 7th CPC to the Petitioners, in accordance with the various DOE circulars and orders referred and alluded to above."



12. This issue was again considered by this Court in **Shikha Sharma (supra)** and even in the case of an unaided minority school it was reiterated that employees of the recognised private schools cannot not be deprived of benefits of Pay Commissions' recommendations and relevant passage from the judgment is as under:

"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."

13. This position of law has been re-stated and re-affirmed by several Single Benches of this Court in **Omita Mago (supra)**; **Meenu Sachdev (supra)**; **Mukesh Kumar Verma (supra)**; **Mrs. Nidhi Batra v. Directorate of Education & Ors., W.P. (C) No. 6656/2022**, decided on 20.12.2022; **Dheeraj Sharma and Others v. Neeraj Chandra and Others, 2024 SCC OnLine Del 3655**; and **Bala Rani Bhatia (supra)**. Be it ingeminated that the Division Bench upheld the judgment of the Single Bench in **Omita Mago (supra)** on 24.01.2023 in **Ahlcon Public School (supra)** and SLP (C) 5353/2023 was dismissed by the Supreme Court on 13.10.2023. The defence of paucity of funds was also negated in this case. Relevant passages from the judgment of the Division Bench are as under:-



“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, W.P.(C) 928/2019 decided on May 06, 2021; Shashi Kiran v. Siifllltharth International Public School, W.P.(C) No. 2734/2021 and Amrita Pritam v. S. S. Mota Singh Junior Model School, W.P.(C) 1335/2019 decided September 22, 2021; Shikha Sharma v. Guru Harkrishan Public School, 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.”

14. Indisputably, 7th CPC was set up by the Government of India vide Resolution dated 28.02.2014 and gave its recommendations for revision of emoluments amongst other recommendations for Central Government Civilian employees, which were notified by Ministry of Finance on 25.07.2016 in the Official Gazette. Pursuant to these recommendations, 2016, Rules were notified incorporating the revised pay matrix and DoE adopted the Rules and in exercise of powers conferred under Rule 50 of DSEAR directed the Managing Committees of the Schools to implement the 2016, Rules and revise the pay structures of their employees at par with employees of corresponding status in the Government schools. Learned counsel for DoE had drawn the attention of the Court to several circulars/orders issued by DoE directing the schools to ensure implementation of 7th CPC recommendation as was done earlier with respect to 6th CPC. From a reading of the aforementioned judgments, this Court



cannot but agree with the Petitioners that their case is covered on all four corners by these judgments, with no exception being brought forth by the counsel for the School and denial of pay revision to the Petitioners will be violation of Article 14 of the Constitution of India. It is thus held that Petitioners will be entitled to pay revision under the 7th CPC, in consonance with CCS (Revised Pay) Rules, 2016 by virtue of provisions of Section 10(1) of DSEAR.

15. Three issues were flagged by the counsel for the School to deny pay revision to the Petitioners under 7th CPC. Coming first to the argument that School is unable to bear the burden of disbursing the revised salaries and emoluments, more particularly the arrears, due to financial crunch, suffice would it be to note that this defence stands negated by this Court in ***Kuttamparampath Sudha Nair (supra)***, placing reliance on the judgments of the Supreme Court and relevant passages from the said judgement are 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.*

36. In the context of Section 10(1) of DSEA&R, this Court had rejected



the argument of paucity of funds as an irrelevant consideration in the case of Samaj Shiksha Samiti v. Delhi State Saraswati Shishu Bal Mandir Karamchari Kalyan (2002) 97 DLT 802. In this context, I may quote a few passages from the judgment in Veena Sharma (Mrs.) v. The Manager, No. 1 Air Force School Palam 2005 VII AD (Delhi) 517 as follows:—

“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 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.

19. The submission of learned counsel for the school that if the relief is granted and the pay scales have to be released in favour of the petitioners, a situation might arise leading to the close of the school is somewhat similar to the apprehensions voiced by the Management in Frank Anthony case (supra). The Supreme Court dealt with arguments in the following terms:—

“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 right 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.

20. The submission of paucity of funds, has to be, therefore, rejected. The subjective or individual hardship of a management, that too sponsored by no less an Organization of the stature of Indian Air force, which even went to the extent of seeking to deny liability on the ground that the school caters to the children of JCOs (Junior Commissioned Officers) impliedly perhaps suggesting that the children of such employees can be taught without compliance with minimum standards imposed by law, cannot be countenanced.”

37. In this regard, I am also fortified in my view by a judgment of a Co-ordinate Bench in Deepika Jain v. Rukmini Devi Public School W.P. (C) 237/2013 decided on 23.09.2013, where implementation of 6th CPC benefits was sought by the Petitioner and the Court held as follows:—

“3. I have held in many cases, including the case of Meenu Thakur v. Somer Ville School W.P.(C) 8748/2010 decided on 13.2.2013 that paucity of funds is not a ground to not pay amounts as per the 6th Pay Commission Report and the order of the Director of Education dated 11.2.2009. A Division Bench of this Court in LPA 286/2010 titled as Rukmani Devi Jaipuria Public School v. Sadhna Payal decided on 11.5.2012 has also held that paucity of funds is not a ground not to make payments as per the 6th Pay Commission Report.”

38. In view of the above, this Court cannot accept the plea of paucity of funds and financial crisis raised by the School.”

16. Learned counsel for the School broadly linked its inability to carry out pay revision to the restraint by DoE to enhance/hike the fee payable by the students. In my view, Sections 10 and 17 of DSEAR operate in different fields. No doubt, statutory provisions make it mandatory for a School to file with the DoE a full statement of fee to be levied during the ensuing academic session and except with the approval of DoE, School cannot charge fee in excess of what is stipulated by the Education Department, however, the two cannot be interlinked and that there is no direct linkage,



co-relation and inter-dependence in respect of payment of salary and right to revise fee, is a view taken by the Division Bench of this Court in ***Ahlcon Public School (supra)***, against which SLP was dismissed. This Court is conscious of the fact that this issue is pending consideration before the Supreme Court in ***Greenfields Public School (supra)***, but there is no stay of the judgment and the Supreme Court has only stayed the payment of arrears, subject to the school depositing 25% of the arrears. It is pertinent to mention that in a batch of appeals one of them being LPA No. 15/2024, the Division Bench of this Court has observed that hearings of the writ petitions or appeals in this Court need not be deferred due to the pendency of the issue, in the absence of stay of the judgement impugned therein. Therefore, the contention of the School that until it is permitted to hike the fee, implementation of 7th CPC must be deferred, is rejected. This stand is even otherwise untenable in the present case, in view of the fact that School has enhanced the fee in the last two years and this is fortified by the documents placed by the Petitioners during the hearing of the writ petition.

17. Coming to the last plank of the argument of the School that the writ petition deserves to be dismissed as grossly barred by delay and laches and law of limitation or in the alternative arrears be restricted to 3 years prior to the filing of the writ petition, the argument only merits rejection in view of the judgment of the Supreme Court in ***Keraleeya Samajam (supra)***, *albeit* the judgment was in the context of 6th CPC, wherein the Supreme Court held as follows:-

“5. Having heard Shri Shekhar Naphade, learned Senior Advocate appearing on behalf of the petitioners and learned counsel appearing on behalf of the respondents and considering orders passed in earlier round of litigations which ended up to this court the liability of the management to pay the salaries to the teaching and non-teaching staff as per the 4th Pay



Commission and 5th Pay Commission ended in favour of the teaching and non-teaching staff working with the petitioners. Therefore as and when the 6th Pay Commission recommendations was made applicable as such it was the duty cast upon the petitioners' institution to pay the salary/wages to the teaching and non-teaching staff as per the applicable pay scale as per the 6th Pay Commission recommendation and for which the staff was not required to move before the Deputy Director (Education) again and again. Therefore, the submissions on behalf of the petitioners that as the respondents approached the Deputy Director (Education) subsequently and therefore the question with respect to the limitation will come into play and therefore the respondents shall be entitled to the arrears of last three years preceding the filing of the writ petitions cannot be accepted.

6. *The respondents were compelled to approach the Deputy Director only when the petitioners though were required to pay the wages as per the applicable rules and as per the recommendation of 6th Pay Commission, failed to make the payment, the respondents were compelled to approach the Deputy Director (Education) thereafter. Therefore for the lapse and inaction on the part of the petitioners, the respondents cannot be made to suffer and deny the arrears of the salaries as per the 6th Pay Commission recommendation, which otherwise they are entitled to. Every time the teachers were not supposed to approach the appropriate authority for getting the benefit as and when there is a revision of pay as per the pay commission recommendations.”*

18. This issue also arose before a Division Bench of this Court in ***Vidya Bharati School v. Directorate of Education and Others, 2022 SCC OnLine Del 4968*** and relying on the judgment of the Supreme Court in ***Keraleeya Samajam (supra)***, the Division Bench held that limiting the claim of arrears to three years prior to filing the writ petition is untenable in view of the dicta of the Supreme Court. The Division Bench held that the School did not comply with the directions and obligations when it was required to do so by revising the salaries in accordance with Section 10(1) of the DSEAR on account of the revision under 6th CPC and now due to lapse of time, it cannot take away the benefits because of its own recalcitrance to comply with Government's directions and statutory obligations. Non-compliance over a long period would not create any special equities in favour of the



School and it does not get absolved of its statutory obligation to pay salaries in terms of 6th Pay Commission's recommendations, as pay revision in terms of Pay Commissions' recommendations is a matter of public policy with the objective of ensuring that with passage of time purchasing power of the Government employee is not denuded by inflation and other relevant factors. I may pen down here at the cost of repetition that even in ***Shikha Sharma (supra)***, this Court has directed release of arrears under 6th CPC to the Petitioners therein without any restrictions/limitation of three years prior to the filing of the writ petitions and in fact Court also directed payment of interest @ 6% per annum with a further direction that on failure to pay the amounts within six months as directed by the Court, School will incur a liability of payment of a higher rate of interest i.e. 9% per annum on the arrears of both 6th and 7th CPC. In this context, I may also allude to a judgment of the Division Bench of this Court in ***D.A.V. College Managing Committee, Through Its General Secretary v. Seema Anil Kapoor and Another, 2023 SCC OnLine Del 2314***, and of the Single Benches in ***Meenu Sachdev (supra)*** and ***Mukesh Kumar Verma (supra)***.

19. In view of this position of law, the argument of the School that the writ petition is barred by delay and laches and/or the arrears be restricted to three years cannot be countenanced and the judgments cited on delay and laches would not aid the School. An argument was raised on behalf of the School that the judgment in ***Keraleeya Samajam and Another v. Pratibha Dattatray Kulkarni (Dead) Through Lrs and Others, 2021 SCC OnLine SC 853***, is *per incuriam* and does not bind the School herein. Be it noted that learned counsel concedes that there is no judgment of the Supreme Court to



his knowledge where claims of an employee pertaining to pay revisions under the recommendations of Central Pay Commissions have been rejected on ground of delay and laches or where arrears have been restricted. There is a difference between the nature of cases cited by the School and the claims of the Petitioners herein which pertain to pay revision under 7th CPC recommendations. The Supreme Court in *Keraleeya Samajam (supra)* held that when 6th CPC was made applicable, duty was cast upon Petitioners' Institution to pay revised salary/wages and it was not the staff which was required to move again and again and thus the question of limitation and/or restricting the arrears to 3 years will not come into play. The contention is therefore rejected in view of the binding dictum in *Keraleeya Samajam (supra)* as well as the judgment of the Division Bench in *Vidya Bharati School (supra)*, which also binds this Court.

20. Accordingly, the writ petition is allowed directing the School to grant benefits of pay revision to the Petitioners under 7th CPC w.e.f. 01.01.2016 and refix their salaries and allowances. Arrears of differential amounts on account of revisions shall be disbursed within 12 weeks from today along with interest @ 6% per annum.

21. Insofar as the issue of Dearness Allowance is concerned, it is left open to the Petitioners to make a comprehensive representation to the School pointing out the difference in the DA paid to them and the rates to which they claim entitlement. As and when, the representation is received, the same shall be considered by the School in accordance with law and taking into consideration the revision in DA from time to time, as notified by GNCTD. Direction is issued to the School to regularly issue the salary slips to the Petitioners so that they are in a position to ascertain the exact



2024:DHC:9977



components of the monthly emoluments paid to them, which is a matter of right.

22. Writ petition stands allowed to the aforesaid extent, with no orders as to costs. Pending applications also stand disposed of.

JYOTI SINGH, J

DECEMBER 24, 2024/shivam