



2024:DHC:7301



\$~104, 106, 122, 53 to 57

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

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Date of Decision: 29th August, 2024

+ W.P.(C) 11822/2024

DAVINDER KAUR & ANR.

.....Petitioners

Through: Mr.J.S.Bedi, Mr.Ankur Garg,
Mr.Saranjit Singh Bhalla, Advocates

versus

DIRECTORATE OF EDUCATION & ORS.

.....Respondents

Through: Mr. Gaurav Dhingra, Mr. Shashank
Singh and Ms. Tapasiya Tomar, Advocates for
R1/DOE.Mr.Abinash Kumar Mishra, Advocate for
Respondents No.2 to 4.

106

+ W.P.(C) 11877/2024

SATWANT SINGH & ORS.

.....Petitioners

Through: Mr.J.S.Bedi, Mr.Ankur Garg,
Mr.Saranjit Singh Bhalla, Advocates

versus

DIRECTORATE OF EDUCATION & ORS.

.....Respondents

Through: Mr. Gaurav Dhingra, Mr. Shashank
Singh and Ms. Tapasiya Tomar, Advocates for
R1/DOE.Mr.Abinash Kumar Mishra, Advocate for
Respondents No.2 to 4.

122

+ W.P.(C) 11966/2024

INDERJEET KAUR

.....Petitioner



2024:DHC:7301



Through: Mr.J.S.Bedi, Mr.Ankur Garg,
Mr.Saranjit Singh Bhalla, Advocates

versus

DIRECTORATE OF EDUCATION & ORS.Respondents
Through: Mr. Gaurav Dhingra, Mr. Shashank
Singh and Ms. Tapasiya Tomar, Advocates for
R1/DOE.
Mr.Abinash Kumar Mishra, Advocate for
Repondents No.2 to 4.

53

+ W.P.(C) 15757/2023 and CM APPL. Nos. 2849/2024 and
17345/2024

PREETI BHATNAGAR & ORS.Petitioners
Through: Mr.J.S.Bedi, Mr.Ankur Garg,
Mr.Saranjit Singh Bhalla, Advocates

versus

DIRECTORATE OF EDUCATION & ORS.Respondents
Through: Mr. Naushad Ahmad Khan, Ms.
Supriya Malik and Mr. Habib-ur-Rehman,
Advocates for DOE.
Mr.Abinash Kumar Mishra, Advocate for
Repondents No.2 to 4.

54

+ W.P.(C) 15781/2023 and CM APPL. Nos. 2852/2024 and
17042/2024

RITU BIR SINGHPetitioner
Through: Mr.J.S.Bedi, Mr.Ankur Garg,
Mr.Saranjit Singh Bhalla, Advocates

versus



2024:DHC:7301



DIRECTORATE OF EDUCATION & ORS.Respondents
Through: Mr.Hintanshu Mishra, Advocate
Mr.Yeeshu Jain, Additional Standing Counsel for
DOE
Mr.Abinash Kumar Mishra, Advocate for
Repondents No.2 to 4.

55

+ W.P.(C) 10/2024

RAGHUVIR SINGHPetitioner
Through: Mr.Nikhilesh Kumar, Advocate

versus

GURU HARKRISHAN PUBLIC SCHOOL
AND ORSRespondents
Through: Mr.Abinash Kumar Mishra, Advocate
for R-1 and 2
Mr. Naushad Ahmad Khan, Ms. Supriya Malik
and Mr. Habib-ur-Rehman, Advocates for DOE.

56

+ W.P.(C) 61/2024

AJIT KAUR MAKKARPetitioner
Through: Mr.J.S.Bedi, Mr.Ankur Garg,
Mr.Saranjit Singh Bhalla, Advocates

versus

DIRECTORATE OF EDUCATION & ORS.Respondents
Through: Mr. Naushad Ahmad Khan, Ms.
Supriya Malik and Mr. Habib-ur-Rehman,
Advocates for DOE.
Mr.Abinash Kumar Mishra, Advocate for R-2-4



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57

+ W.P.(C) 8/2024
HAWA SINGH

.....Petitioner

Through: Mr.Nikhilesh Kumar, Advocate

versus

GURU HARKRISHAN PUBLIC SCHOOL
AND ORS

.....Respondents

Through: Mr.Abinash Kumar Mishra, Advocate
for R-1 and 2Mr. Naushad Ahmad Khan, Ms. Supriya Malik
and Mr. Habib-ur-Rehman, Advocates for DOE.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)****CM APPL. 49186/2024 in W.P.(C) 11822/2024****CM APPL. 49398/2024 in W.P.(C) 11877/2024****CM APPL. 49785/2024 in W.P.(C) 11966/2024**

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.

W.P.(C) 11822/2024**W.P.(C) 11877/2024****W.P.(C) 11966/2024****W.P.(C) 15757/2023, CM APPL. Nos. 2849/2024 and 17345/2024****W.P.(C) 15781/2023, CM APPL. Nos. 2852/2024 and 17042/2024****W.P.(C) 10/2024****W.P.(C) 61/2024****W.P.(C) 8/2024**

3. Writ petitions bearing Nos. W.P.(C) 11822/2024, 11877/2024, 11966/2024, 15757/2023, 15781/2023 and 61/2024 have been filed by the Petitioners seeking the following reliefs:-



“a) Issue a writ of mandamus, order or direction, directing the Respondent No.1 to calculate arrears towards salary (due and drawn statement) from 2006 to till date/retirement and to calculate TA, DA, 6 CPC & 7 CPC Arrears Gratuity and leave encashment.

b) Issue a writ of mandamus, order or direction, directing the Respondent No. 2 to 4 to release the terminal benefits to the Petitioner which includes gratuity as per caping of Rs. 20 Lakhs, leave encashment, arrears towards 6th Pay Commission, Arrears of DA and TA from 2014 till retirement, Implementation and release arrears towards 7th Pay Commission with interest;

c) Issue a writ a mandamus, order or direction, direct the respondent No 2 to 4 to release pending 40% salary to petitioner from Jan, 2020 to Feb 2021with Interest of 9% per annum till the date of release of arrears of pending salary.

d) Issue a writ a mandamus, pass similar Judgment W.P. (C) 3746/2020 and connected matters titled as Shikha Sharma V/s GHPS & Ors “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.”

4. Writ petition bearing No. W.P.(C) 8/2024 has been filed for 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 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;”

5. In Writ petition bearing No. W.P.(C) 10/2024, Petitioner seeks the following reliefs:-



“a) Issue a writ of mandamus, order or direction, directing the Respondent No. 1 & 2 to release the gratuity and leave encashment as per revised norms as well as in terms of 7th CPC, along with interest till realization;

b) Issue a writ of mandamus, order or direction, directing the Respondent No.1 & 2 to pay the arrears towards 7th CPC which includes TA/DA, interest etc. to the Petitioner;

c) Issue a writ of mandamus, order or direction, directing the Respondent Nos. 1 & 2 to give 2nd MACP which is due since from 1.12.2016 and to pay arrears along with interest.

d) Issue a Writ of Mandamus, order or direction, directing the Respondent No.3 to provide due and drawn statement of the Petitioner with respect to all arrears including terminal benefits, gratuity, leave encashment, 7th CPC arrears, interest, etc.”

6. Issue notice in W.P. (C) 11822/2024, W.P. (C) 11877/2024 and W.P. (C) 11966/2024.

7. Mr. Gaurav Dhingra, learned counsel accepts notice on behalf of Respondent No.1/DOE.

8. Mr. Abhinash Kumar Mishra, learned counsel accepts notice on behalf of Respondents No.2 to 4

9. These petitions involve common questions of law and are being disposed of by this common judgment. Petitioners are retired employees of Guru Harkrishan Public School (hereinafter referred to as the ‘School’) and the grievances ventilated in the present writ petitions broadly pertain to revision of salaries, allowances and retiral benefits including gratuity and leave encashment, under 6th and/or 7th CPC as well as for payment of Transport Allowance (‘TA’), Dearness Allowance (‘DA’) and 40% balance salaries for the period January, 2020 to February, 2021 with interest @ 9% per annum. In W.P. (C) Nos. 8/2024 and 10/2024, Petitioners seek revised retiral benefits in terms of 7th CPC only along with interest. In W.P. (C) 10/2024, an additional relief of financial upgradation under 2nd MACP



Scheme w.e.f. 01.12.2016 is sought.

10. Learned counsels for the Petitioners argue that cases of the Petitioners are squarely covered by the judgments of this Court in ***Kuttamparampath Sudha Nair v. Manging Committee Sri Sathya Sai Vidya Vihar and Another, 2021 SCC OnLine Del 2511*** and ***Shikha Sharma v. Guru Harkrishan Public School and Others, 2021 SCC OnLine Del 5011***, which have been subsequently followed in several other cases granting benefits to the employees of different schools pertaining to revision in salaries/allowances/retiral benefits, as per the 6th/7th CPCs along with TA, DA and retiral benefits. It is further urged that it is the statutory obligation of the School to implement recommendations of Central Pay Commissions and yet there is total inaction and this is despite the fact that the Directorate of Education (DoE) has issued Circulars from time to time directing all recognised private schools to implement Pay Commissions' recommendations.

11. Mr. Mishra, learned counsel representing the School is unable to dispute that the cases of the Petitioners are covered on all four corners by the judgments of this Court in ***Kuttamparampath Sudha Nair (supra)*** and ***Shikha Sharma (supra)***. He, however, submits that insofar as the benefits of 7th CPC are concerned, a Co-ordinate Bench is dealing with the issue in a batch of contempt petitions and modalities are being worked out to release the same.

12. Having heard the learned counsels for the parties, this Court finds merit in the contention of the Petitioners that the reliefs sought in the present writ petitions are covered by the judgments in ***Kuttamparampath Sudha Nair (supra)*** and ***Shikha Sharma (supra)***. Relevant passages from



Kuttamparampath Sudha Nair (supra) are as follows:

“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.

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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.

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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.

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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.



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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."

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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.

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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."

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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.

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39. Accordingly, the writ petitions deserve to be allowed. The School is directed to re-fix the salaries and other emoluments of the Petitioners



applying the revised pay matrix under 7th CPC, in accordance with the order of the DOE dated 19.08.2016 and the Circular dated 17.10.2017, whereby the CCS (Revised Pay) Rules, 2016 were adopted. Petitioners shall be entitled to arrears with effect from 01.01.2016, the date from which the recommendations of 7th Pay Commission have been given effect. The School shall carry out the exercise of refixing the revised salaries and emoluments of the Petitioners within a period of four weeks from today and the payments shall be made accordingly hereinafter.”

13. In **Shikha Sharma (supra)**, a Co-ordinate Bench of this Court held as follows:-

“20. Having heard the learned counsel for the parties and considered the record, the issue which falls for consideration is whether the petitioners are entitled to the benefits of the 6th and 7th CPC and the arrears thereof including the retiral benefits, transport allowance and MACP as claimed by the petitioners in these petitions.

21. Before I deal with the submissions made by the learned counsel for the parties, the gist of the submissions made by Mr. Abinash Kumar Mishra are as follows:

(i) The schools are functioning as unaided minority schools under the DSE Act, hence entitled to regulate their own payment structure and they would be exempted from the applicability of 7th CPC as they impart education to the students of the minority Sikh community having poor financial conditions.

(ii) The Centralised Fee Account was created by the DSGMC which has now been discontinued. Since the discontinuation of the said account, the GHPS Society has no control over the financial issues of GHPS and it is for the individual Schools to maintain to their own funds and income.

(iii) The voluntary filing of affidavits and undertakings by the DSGMC to state that they are willing to help the Schools and as such this cannot be treated as a Statutory liability or obligation for payment of the 6th and 7th CPC benefits and therefore no directions can be passed for directing voluntary actions of the DSGMC.

(iv) The GHPS are charging fees based on the 6th CPC scales and the fee structure gets regularly approved by the DoE, due to this the fee has not been charged on the basis of 7th CPC report.

(v) Until the GHPS comes with a scheme to recover the fee from 2016 onwards with the approval of DoE, till then no direction should be passed against the DSGMC/GHPS Society/GHPS.

22. Having noted the broad submissions of Mr. Abinash Kumar Mishra,



the first issue need to be decided is whether the Schools being minority institutions, can be directed to pay the benefits of the 6th and 7th CPC. The issue is no more res-integra firstly in view of the fact Section 10 of the DSE Act which reads as under:

“10. Salaries of employees—(1) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority:

Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognised private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such school to bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority:

Provided further that the failure to comply with such direction shall be deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of section 4 shall apply accordingly.

(2) The managing committee of every aided school shall deposit, every month, its share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator and the Administrator shall disburse, or cause to be disbursed, within the first week of every month, the salaries and allowances to the employees of the aided schools.”

23. *The said Section contemplates that the pay and allowances of the employees of the recognised private Schools could not be less than that of the employees of the Government run Schools.*

24. *Secondly, the Supreme Court in its opinion in the case of Frank Anthony Public School Employees' Association v. Union of India (UOI), (1986) 4 SCC 707, wherein the Court was concerned that the validity of Section 12 of the DSE Act which excluded the applicability of Sections 8 to 11 of the DSE Act to the unaided minority Schools has held, Section 12 to be discriminatory and as such bad in law and thereby making Sections 8 to 11 of the DSE Act (except Section 8(2) of the DSE Act) applicable to the minority Schools which includes Section 10 of the DSE Act, which I have already reproduced above. The relevant paragraphs of the judgment are reproduced as under:*

“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.

22. After the arguments of both sides were fully heard, Shri Sushil Kumar who appeared for the institution along with Mr. Anthony submitted that according to the instructions of the Council for the Indian School Certificate Examination, “the staff must be paid salaries and allowances not lower than those paid in comparable Government schools in the State in which the school is located” and in view of this instruction it was not necessary for us to go into the question of the applicability of Section 10 to minority institutions. We do not attach any significance to this last minute, desperate submission. It is not clear whether the instruction is a condition imposed by the Council pursuant to Section 19 of the Delhi School Education Act. There is no way by which the staff can seek to enforce the instruction. Nor is the instruction of any relevance since it is not the case of the respondents that the institution is paying or is agreeable to pay the scales of pay stipulated in the instruction.

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.”

(emphasis supplied)

25. A Full Bench of this Court in the case of *Guru Harkishan Public School v. Director of Education*, (2015) 221 DLT 448 while examining applicability of Rule 121 of the Delhi School Education Rules, 1973, though not in the context of Section 10 of the DSE Act, has in detail referred to the judgment of the Supreme Court in *Frank Anthony Public School Employees' Association* (supra) and finally held in paragraphs 35 to 37 as under:

“35. The court further held that ‘mere prescription of scales of pay and other conditions of service would not jeopardise the right of the management of minority institutions to appoint teachers of their choice. The excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff, and in turn, that would depend on the quality and the contentment of the teachers. Conditions of service pertaining to minimum qualifications of teachers, their salaries, allowances and other conditions of service which ensure security, contentment and decent living standards to teachers and which will consequently enable them to render better service to the institution and the pupils cannot surely be said to be violative of the fundamental right guaranteed by Article 30(1) of the Constitution. The management of a minority Educational institution cannot be permitted under the guise of the fundamental right guaranteed by Article 30(1) of the Constitution, to oppress or exploit its employees any more than any other private employee. Oppression or exploitation of the teaching staff of an educational institution is



bound to lead, inevitably, to discontent and deterioration of the standard of instruction imparted in the institution affecting adversely the object of making the institution an effective vehicle of education for the minority community or other persons who resort to it. The management of minority institution cannot complain of invasion of the fundamental right to administer the institution when it denies the members of its staff the opportunity to achieve the very object of Article 30(1) which is to make the institution an effective vehicle of education’.

36. Thus, Section 8(1), 8(3), 8(4) and 8(5) were held not to encroach upon any right of the minorities to administer their educational institutions. However, Section 8(2) was held to be not applicable to minority institutions.

37. The Court finally held 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’.

(emphasis supplied)

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.*

.....

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.”



14. In light of the aforesaid judgments, provisions of Section 10(1) of Delhi School Education Act and Rules, 1973 (DSEAR) and the Circulars of DoE, Petitioners are held entitled to the reliefs sought in the respective writ petitions. *Albeit* there can be no doubt that Petitioners are entitled to revision in salaries/allowances as well as retiral benefits on implementation of 7th CPC recommendation, however, it needs to be noted that a Co-ordinate Bench of this Court is examining the issue with respect to modalities of disbursement of the benefits and therefore at this stage it would be appropriate to hold that as and when a decision is taken in those batch of petitions and subject to the decision, benefits of 7th CPC will be disbursed to the Petitioners. All other benefits arising under 6th CPC as well as balance 40% salaries including revised retiral benefits shall be released within twelve weeks from today, with simple interest @ 6% per annum on the arrears from the date the payments became due till actual payment.

15. As far as the claims with respect to TA and DA are concerned, the School shall take a decision within twelve weeks from today, in consonance with the directions of the Court in *Shikha Sharma (supra)*, which are as follows:

“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.”



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16. Writ petitions stand disposed of in the aforesaid terms along with pending applications.

JYOTI SINGH, J

AUGUST 29, 2024/SV/shivam