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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ W.P.(C) 2734/2021, CM No. 20041/2021  
SHASHI KIRAN & ORS.

..... Petitioners

Through: Mr. Anuj Aggarwal, Adv.

versus

SIDDHARTH INTERNATIONAL PUBLIC SCHOOL & ANR.

..... Respondents

Through: Mr. R.M. Sinha, Adv. with  
Mr. P.M. Sinha, Adv. for R-1  
Mr. Zahid, Adv. for Mr. Naushad  
Ahmed Khan, SC (GNCTD) /R-2

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**ORDER**

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**03.09.2021**

The matter is being heard through Video-Conferencing.

1. The present petition has been filed by the petitioners with the following prayers:-

*“In the premise aforesaid, the petitioners most humbly pray that this Hon'ble Court may be pleased to:-*

*(i) issue an appropriate writ, order or direction thereby setting aside the impugned Show Cause Notices/Memos/letters dated 08.01.2021, 12.01.2021, 02.02.2021 & 06.02.2021 issued by the respondent No.1/school to the petitioners on account of making joint representation seeking full salary w.e.f. 01.04.2020;*

*(ii) issue an appropriate writ, order or direction thereby directing the respondent No.1/school to Pay/release full salary to the petitioners w.e.f. 01.04.2020 and continue paying full salary on monthly basis to the petitioners regularly;*

*(iii) issue an appropriate writ, order or direction thereby directing the respondent No. 2, i.e. the Director of Education to take appropriate action against the respondent No.1/school on account of violation of the provisions of the Delhi School Education Act, 1973 as well as the Delhi School Education Rules, 1973;*

*(iv) issue an appropriate writ, order or direction thereby directing the respondents to pay the arrears of salary along with appropriate interest to be calculated@ 18% per annum upon the same;*

*(v) Allow the present writ petition with exemplary compensation, cost and litigation expenses in favour of the petitioners; and*

*(vi) Pass any such other or further orders as this Hon'ble Court may deem fit and proper in the interest of justice and in favour of the petitioners.*

2. In substance, the grievance of the petitioners is denial of balance payment of salary between the period April 01, 2020 till July 31, 2021 and also, issuance of show cause notices to the petitioners only on the ground that they have demanded their salaries.

3. In support of his submission, Mr. Aggarwal has drawn my attention to pages 12 and 13 of the writ petition, which have details of the salary received by the petitioners w.e.f. April 01, 2020 and the balance remaining. According to him, the respondents could not have denied the complete salary to the petitioners. Mr. Aggarwal concedes that full salary has been paid for the month of August, 2021.

4. On the other hand, Mr. R.M. Sinha, learned counsel for the respondent No.1 School, by drawing my attention to order passed by this Court on July 17, 2020 in writ petition filed by the respondent No.1 School

being W.P.(C) 4311/2020 would contend that the respondent No.1 School had approached this Court with a prayer that the Director of Education must allow the respondent No.1 School to reduce the strength of the teaching /non-teaching employees proportionately i.e. commensurating with the number of students studying in the School.

5. According to Mr. Sinha, despite representation dated November 27, 2019, the grievance of the respondent No.1 School was not considered. It is under these circumstances that this Court had, on a statement made by the Additional Standing Counsel for the GNCTD directed the Director of Education to consider the representation and pass an order. It is the submission of Mr. Sinha that the Director of Education has not considered the representation till date with the result, the teaching and non-teaching staff working in the School has not been reduced, resulting in financial hardship to the School as the payment of School fee by the students is limited / erratic. In substance, he stated because of financial hardship, the salary of the teachers could not be paid in full. He submits that as the financial position is improving, the School is in a position to pay the balance of the salary to the teachers but in a period of six to seven months from today.

6. Insofar as the show cause notices issued to the petitioners are concerned, Mr. Sinha fairly concedes that any show cause notice, which is related to the demand of salary by the petitioners, cannot be justified and the same be treated as withdrawn.

7. Hearing the learned counsel for the parties, the issue of payment arrears of salary is no more *res-integra*. This Court in ***Rambir Singh Malik v. Greenfields Public School, W.P. (C) 9486/2020***, wherein the issue is non

payment of complete salary between the period 2020 and 2021 (and not arrears of 7<sup>th</sup> CPC) had directed the payment with interest @ 7% p.a. In the order, this Court relied on the judgment by a Coordinate Bench in *Kuttamparampath Sudha Nair v. Managing Committee Sri Sathya Sai Vidya Vihar and Anr.*, W.P.928/2019, wherein in paras 35 to 37, the Court held as under:

*“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 vs. State of Kerala, AIR 1962 SC 12 and Hydro (Engineers) Private Ltd vs. 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. vs. State of Karnataka, 1996 (6) SCC 547, 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 vs. 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.) & Ors. vs. The Manager, No.1 Air Force School Palam & Ors. 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 tht 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 vs. Rukmini Devi Public School & Ors. 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 Vs. Somer Ville School & Ors. 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 Vs. Sadhna Payal & Ors. 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.”*

8. I see no reason to deviate from the said orders passed by this Court. Accordingly, it is directed that the balance salary of the petitioners between April 01, 2020 till July 31, 2021 shall be released to the petitioners within a period of eight weeks with interest @ 7% p.a.

9. Petition is disposed of. No costs.

**CM No. 20041/2021**

Dismissed as infructuous.

**V. KAMESWAR RAO, J**

**SEPTEMBER 03, 2021/ak**