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

+ W.P.(C) 2586/2021

W.P.(C) 3117/2021

SULOCHANA SHARMA

PURNIMA RANI

..... Petitioners

Through: Mr. Anuj Aggarwal, Mr. Shakib
Malik, Advocates

versus

SIDDHARTH INTERNATIONAL PUBLIC SCHOOL & ANR.

..... Respondents

Through: Mr. Bhanu Bhaskar, Adv. for R-1
Mr. Sujeet Kr. Mishra, Adv. for
R-2/DOE
Mr. V. Balaji, Panel Adv. for R-2
with Ms. Neha Singh, Adv. (Item
no.15)

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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21.03.2022

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

(i) issue an appropriate writ, order or direction thereby directing the respondent No.1 school to fix the salary of the petitioner in terms of Section 10 of the Delhi School Education Act, 1973 and conformity with of the recommendations of 6th Central Pay Commission w.e.f. 01.01.2006 as well as 7th Central Pay Commission w.e.f. 01.01.2016 as revised from time to time, along with

appropriate interest upon the arrears of salary;
(ii) issue an appropriate writ, order or direction thereby directing the respondent No. 1 school to pay the arrears of salary, as payable to the petitioner on account of revision of her salary in terms of the recommendation of 6th Central Pay Commission w.e.f. 01.01.2006 as well as 7th Central Pay Commission w.e.f. 01.01.2016 as revised from time to time, along with appropriate interest to be calculated @ 18% per annum;
(iii) issue an appropriate writ, order or direction thereby directing the respondent No.2 to take appropriate action against the respondent No.1 on account of violation of provisions of the Delhi School Education Act, 1973 and the Rules made thereunder;
(iv) Allow the present writ petition with exemplary compensation, cost and litigation expenses in favour of the petitioner; and
(v) 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 petitioner.

2. The case of the petitioners in these petitions is that they have been appointed as Assistant Teacher in the respondent No.1 School in the years 2010 / 2009 respectively and they have worked continuously in the respondent No.1 School till the date of their termination. It is also the case of the petitioner in W.P.(C) 3117/2021 that she was promoted to the post of TGT. The grievance of the petitioners is primarily two-fold i.e. they have not been paid the benefits under the Sixth Pay Commission and the Seventh Pay Commission. It is conceded by Mr. Anuj Aggarwal, learned counsel for the petitioners that the petitioners' services have been terminated in the year 2021 / 2022 and the said termination has been challenged before the Delhi School Tribunal and the appeals are pending.

3. The case of the respondent No.1 / School as contended by Mr.

Bhaskar is that the petitioners were appointed only in the year 2019 which is after the recommendations of the Seventh Pay Commission were implemented in favour of the teachers and the respondent No.1 / School has been paying the benefits there under till the date of their termination. In this regard Mr. Bhaskar has relied upon the paragraph 7 of the counter affidavit filed by the respondent No.1 / School in support of his submission, wherein the following has been stated with regard to petitioner in W.P.(C) No. 2586/2021:-

“7. That the petitioner was appointed as on 01.02.19 with the respondent School and as per 7th CPC she was being paid the following salary.

		<u>In Rupees</u>
<i>Basic Pay</i>	=	<i>35400.00</i>
<i>DA @ 12%</i>	=	<i>4248.00</i>
<i>HRA @ 8%</i>	=	<i>2832.00</i>

<i>Total</i>	=	<i>42480.00</i>

Thus, it will be seen that the petitioner was actually being paid Rs.43562.00 per month as salary.”

4. During the course of hearing, an issue has arisen whether the petitioners were appointed in the year 2010 / 2009. According to Mr. Anuj Aggarwal there is sufficient evidence to prove the appointments from those years and also entitlement of the benefits under the Sixth Pay Commission from the date of appointment. Mr. Bhaskar would contest the said submission and state that since the appointment of the petitioners was in the year 2019, the petitioners have been paid the benefits as per 7th CPC. Mr. Bhaskar also states that the issue whether the petitioners were appointed in the year 2010 / 2009 is subject matter of the appeals before the Delhi School

Tribunal and the same shall be decided by the Tribunal itself.

5. Mr. Aggarwal concedes to this submission of Mr. Bhaskar. If that be so, the only issue which need to be decided in these petitions is whether the petitioners who were working in the respondent No.1 School are entitled to the benefits of the 7th CPC. Mr. Aggarwal has raised an issue of calculation depicted by the respondents in para 7 of the counter affidavit in W.P.(C) 2586/2021. Mr. Aggarwal states that as an issue of calculation has arisen, the matter be decided by the Director of Education and if the calculations are not in accordance with the recommendation of the Seventh Pay Commission, the Director of Education must carry out the exercise and depict the exact salary of the petitioners to enable the respondent No.1 pay the same at least for the period, the petitioners were working in the respondent No.1 / School before their services were terminated i.e., 2019-21/22. Mr. Bhaskar is agreeable to the submission made by the Mr. Aggarwal who had relied upon the judgment of the coordinate Bench of this Court in W.P. (C) 6868/2012 decided on 13th November, 2013 wherein in paragraph 7, the Court held as under:

“Accordingly, let petitioners now file detailed representations to the Director of Education/respondent no.3 within a period of four weeks from today giving details under different heads and for different periods stating what are the amounts which are due to the petitioners in terms of prayer clauses made in this writ petition. A copy of these representations will be given to the respondent no.1/school through its counsel who appears in this Court. School will give response to these representations and calculation sheets of the petitioners to the Director of Education within a period of four weeks and advance copy of which will be given to the petitioners through their counsel in this Court. The Director of Education will thereafter nominate an appropriate officer to go

into the accounting and the amounts due. The officer appointed by the Director of Education should complete the exercise within a period of four months from today. On the amounts which would become due to the petitioners, if the officer as appointed by the Director of Education so finds that amounts are due, then, on such amounts under all heads, petitioners will be entitled to interest @ 9% per annum simple after 30 days from the dates of their resignations/superannuation given to the respondent no.1/School. Amounts which are calculated, if found due and payable to the petitioners, in terms of the specific order to be passed by the officer appointed by the Director of Education, will be paid to the petitioners by the respondent no.1/school within a period of six months from today, failing which interest will thereafter become payable @12 % per annum simple.”

6. Accordingly, both the petitions are disposed of by allowing the petitioners to file the detail representation to the Directorate of Education within the period of four weeks from today with regard to their claim of benefits of Seventh Pay Commission from 1st February 2019 (both the cases) till the date of their termination i.e. 30th January, 2021 and 12th January 2022 by giving details under different heads and for different periods stating what are the amounts which are due to the petitioners in terms of the recommendations of the Seventh Pay Commission. On the receipts of the representations by the Directorate, it shall seek the comments of the respondent no.1/school and on receiving the said comments, the Directorate shall go into the accounting and the amounts due and complete the exercise within two months thereafter. If any of the amounts become due to the petitioners as per the calculation undertaken by the Directorate, the said amount shall be released to the petitioners with interest @ 6% per annum within four weeks thereafter. If the amount is not paid within four

weeks of the computation by the Directorate, the respondent no.1/school shall pay a higher interest @ 9% per annum. It is made clear that with regard to the prayer of the petitioners for grant of benefit under the Sixth Pay Commission, the same has not been considered by this Court, as the same has to be looked into on the basis of the findings arrived at by the Tribunal whether the appointment of the petitioners was in the year 2010/2009.

7. Liberty is with the petitioners to make a claim on the basis of the findings, if any, arrived at by the Tribunal in their favour.

8. The petitions are disposed of.

V. KAMESWAR RAO, J

MARCH 21, 2022

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