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

Date of Decision: 20th December, 2022

+ W.P.(C) 6841/2022

MUKESH KUMAR VERMA Petitioner

Through: Mr. Anuj Aggarwal, Mr. Manas Verma, Mr. Shubham Punthir and Ms. Shradha Adhikari, Advocates.

versus

LIONS PUBLIC SCHOOL & ORS. Respondents

Through: Mr. Vivek Kumar Tandon, Ms. Rinku Tiwary and Ms. Perna Tandon, Advocates for R-1 and R-2.

Mr. Naushad Ahmed Khan, Advocate for R-3.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

C.M. APPL. 55088/2022 (Additional Documents by the Petitioner)

1. Issue notice.
2. Mr. Vivek Kumar Tandon, learned counsel accepts notice on behalf of Respondents No. 1 and 2.
3. Mr. Naushad Ahmed Khan, learned counsel accepts notice on behalf of Respondent No. 3.
4. For the reasons stated in the application, the same is allowed and the documents are taken on record.
5. Application stands disposed of.

W.P.(C) 6841/2022

6. Present writ petition has been filed by the Petitioner seeking the following reliefs:

“(i) issue an appropriate writ, order or direction thereby directing the respondent No.1/school to revise/re-fix the salary of the petitioner as per the 7th Central Pay Commission w.e.f. 01.01.2016 in terms of Section 10 of the Delhi School Education Act, 1973;

(ii) issue an appropriate writ, order or direction thereby directing the respondent No.1/school to pay due salary to the petitioner in terms of Section 10 of the Delhi School Education Act, 1973 and in terms of the recommendation of 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;

(iii) issue an appropriate writ, order or direction thereby directing the respondent No.3 to take appropriate action against the respondent No.1 on account of violating the 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.”

7. The narrative of facts that emerges from the averments in the writ petition is that Petitioner was appointed to the post of TGT (Physical Education) on 16.05.1994 by Respondent No. 1/ Lions Public School (hereinafter referred to as the ‘School’) as a permanent employee and has an unblemished and uninterrupted record of service. The School is a private unaided recognized School in Delhi and admittedly governed by the Delhi School Education Act, 1973 (hereinafter referred to as the ‘Act’) and the Rules framed thereunder.

8. On 01.07.2004, Petitioner was promoted to the post of PGT (Physical Education). On 21.02.2015, Petitioner along with 20 other teachers/employees of the School preferred a writ petition being W.P.(C) 1753/2015, before this Court seeking pay revision in accordance with the recommendations of the 6th Central Pay Commission (CPC) w.e.f. 01.01.2006, in terms of Section 10(1) of the Act and on 23.02.2015, notice was issued in the writ petition. During the pendency of the petition, matter was amicably settled between the parties and a Memorandum of Settlement was signed on 03.03.2016. It was agreed that benefits of the 6th Pay Commission including

Dearness Allowance etc. shall be paid to the Petitioners and recording the settlement between the parties, writ petition was disposed of on 15.03.2016.

9. Case set out by the Petitioner is that he is entitled to pay revision under the 7th CPC recommendations, embodied in CCS (Revised Pay) Rules, 2016. Being aggrieved by the failure of the School to revise his salary and emoluments, Petitioner served a legal notice seeking parity with his counterparts in other Schools, invoking Section 10(1) of the Act. On receipt of the notice, instead of paying the dues of the Petitioner, the School started victimising and harassing the Petitioner and issued several Memos/notices levelling false allegations and finally issued an order dated 29.03.2022, terminating the services of the Petitioner with immediate effect. The termination order has purportedly been issued on the ground that Physical Education subject at +2/Senior Secondary level has been abolished and accordingly, the post of PGT (Physical Education) has also been abolished and Petitioner has become surplus. Petitioner thereafter made a complaint to the Public Grievance Commission with respect to harassment and non-payment of salary by the School. Thereafter, Petitioner received two cheques, one for an amount of Rs.2,23,854/- and the other for Rs.69,711/- respectively, where the latter is salary for the month of March, 2022 and the former is 3 months' salary, which has not been encashed by the Petitioner.

10. It is further averred that Directorate of Education (DOE) has issued a show cause notice dated 21.10.2021 to the School on account of failure to comply with the provisions of the Section 10 of the Act, followed by warning letters dated 25.01.2022, 17.03.2022 and 22.04.2022. DOE has categorically directed the School to redress the grievance of the Petitioner and pay salary and other allowances as per

the 7th CPC, failing which action of de-recognition and/or any other punitive act shall be initiated under the Act. Writ petition was filed in March, 2022 and it is averred therein, as an illustration, that upon implementation of 7th CPC, salary for the month of March, 2022 should be approximately Rs.1,51,632/-, whereas the Petitioner was getting nearly half of the due salary i.e. Rs.69,711/-.

11. Contention of the learned counsel for the Petitioner is that by virtue of provisions of Section 10(1) of the Act, Petitioner is entitled to revision in his salary and other allowances under the 7th CPC at par with teachers of corresponding status working in the schools run/ recognised and regulated by the Delhi Government, aided or unaided and no exception can be made to this provision by the School. Despite its statutory liability to fix the salary of the Petitioner by granting benefits of the 7th CPC, School has failed to take the necessary action. The case of the Petitioner is squarely covered by various judgments of this Court, where the Courts have held that provisions of Section 10 of the Act are mandatory and Schools have to comply with the statutory obligations and re-fix the salaries of the employees/teachers, by granting benefits of the Pay Commission's recommendations. Reliance is placed on the judgments in *Lata Rana and Ors. v. D.A.V. Public School and Ors.*, 2018 SCC OnLine Del 11254; *Kuttamparampath Sudha Nair v. Managing Committee, Sri Sathya Sai Vidya Vihar and Another*, 2021 SCC OnLine Del 2511; *Sadhna Payal & Ors. v. Director of Education and Anr.*, 2010 SCC OnLine Del 80 and *Shikha Sharma v. Guru Harkrishan Public School and Others*, 2021 SCC OnLine Del 5011.

12. It is submitted by learned counsel for the Petitioner that as discernible from the affidavit filed in this Court, benefits of 7th CPC are being denied to the Petitioner primarily on the premise that the

School is under a financial constraint and does not have sufficient funds/resources to pay the revised salary and arrears, which is factually a false and incorrect stand, not substantiated by the relevant records, besides being legally unsustainable. It is submitted that as per the report of the Audit team, which is placed on record by the Petitioner, School is maintaining Fixed Deposits in various banks to the tune of over Rs.11 crores and current saving balance is over Rs.80 lacs. As per the audit team, School has sufficient funds to pay salary and other admissible allowances as well as arrears as per 7th CPC to its employees. The audit team was constituted by the Deputy Director of Education specifically to ascertain the availability of funds for the purpose of payment of salaries etc. to the staff of the School as per 7th CPC. It is further submitted that this Court has already negated the alleged defence of the Schools that they are unable to implement the recommendations of the 6th and 7th Pay Commissions on account of paucity of funds and in this context, learned counsel relies on the judgment in *Shikha Sharma (supra)* and *Kuttamparampath Sudha Nair (supra)*.

13. Mr. Tandon, learned counsel appearing on behalf of Respondents No. 1 and 2 *per contra* submits that the School is, in fact, under a financial crisis and is unable to bear the burden of paying the revised salaries of the employees under the 7th CPC or the arrears consequent thereto. The School is providing free education to students belonging to the weaker strata of the society to the extent of 25% of the total seats in addition to incurring expenses on the maintenance, electricity, water etc. During the period of COVID-19 Pandemic, DOE was issuing Circulars, from time to time, permitting charging the tuition fee only for the lockdown period and subsequently, the annual and development charges also, but on *pro rata* basis. This has led to

further depletion in the corpus and if the salaries are revised under the 7th CPC and arrears are disbursed, it may lead to a situation of closure or takeover of the School.

14. It is further submitted that when the Petitioner along with certain other employees had filed the earlier writ petition for grant of benefits under the 6th CPC, School had amicably resolved the matter and agreed to pay the revised salary and allowances including the arrears, despite financial hardship, however, in the current financial condition, School is unable to bear the financial burden of paying the 7th CPC benefits. Writ petition is also contested on the ground that the same is barred by delay and laches. It is urged that 7th CPC recommendations came in the year 2016, followed by the Revised Pay Rules in the same year and thus the present writ petition, filed in the year 2022, should be dismissed as barred by delay and limitation, as applicable to filing of a suit. Without prejudice to the aforesaid contention, it is argued that even assuming for the sake of argument that Petitioner is entitled to revision of salary and allowances under the 7th CPC and consequent arrears, the arrears be restricted to a period of three years preceding the year in which the present writ petition was filed, as per the settled law.

15. Short counter affidavit has been filed on behalf of Respondent No. 3/Directorate of Education (DOE). Stand of DOE is that Directorate is the Regulatory Authority for regulating education in the Schools, run and established by the Government and aided by it as well as private unaided schools recognized by it and these Schools are under an obligation to comply with the provisions of the Act and the Rules framed thereunder. *Vide* order dated 25.08.2017, DOE has issued directions to all the unaided private Schools in the NCT of Delhi for implementation of the 7th CPC recommendations w.e.f.

01.01.2016. Implementation of the Central Pay Commission's Recommendations has nothing to do with the financial health of the School, since Section 10(1) of the Act mandates that every teaching and non-teaching staff in the private unaided recognized school is entitled to get the same benefit as his/her counterpart in the Government or Government aided school. These directions were reiterated by the DOE in the order dated 09.10.2019. On 02.12.2021, DOE directed the School in the present case to comply with the provisions of Section 10(1) of the Act and pay the salary and other admissible allowances to its employees as per the 7th CPC.

16. It is also submitted that insofar as the termination of the Petitioner is concerned, the same has been challenged before the Delhi School Tribunal and is pending consideration, however, this should not come in the way of the Petitioner getting the benefits of the 7th CPC, till the date of termination, at this stage.

17. I have heard the learned counsels for the parties and examined their submissions.

18. Facts to the extent that Petitioner was appointed on 16.05.1994 as TGT (Physical Education) Teacher by the School and was promoted subsequently as PGT (Physical Education) on 01.07.2004, are not disputed. It is also not disputed that till the date of termination of the Petitioner on account of the abolishing of the concerned subject and the post, Petitioner has an unblemished record of service. The School has also admitted that Petitioner was party to the writ petition being W.P.(C) 1753/2015, wherein pay revision under the 6th CPC was sought and the writ petition was disposed of as the matter was amicably settled and School had agreed to disburse the said benefits. Insofar as the termination of the Petitioner is concerned, while it is the stand of the Petitioner that the purported termination is on account of

the fact that he had sought benefits of the 7th CPC and this was a measure to victimise and harass the Petitioner, the stand of the School is that the abolition was for a genuine cause and was not aimed at harassing the Petitioner. It is a matter of record that the termination order has been challenged by the Petitioner before the Delhi School Tribunal and the Appeal bearing No. 20/2022 is pending adjudication.

19. The question that arises before this Court is limited to the entitlement of the Petitioner for revision of his salary and other admissible emoluments as per the 7th CPC and the claim is predicated on Section 10(1) of the Act. For ready reference, Section 10(1) of the Act is extracted hereunder:

“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.”

20. Perusal of the aforesaid provision clearly shows that the intention of the Legislature in enacting the said Section was to ensure that the pay and allowances as well as 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 schools run by the Appropriate Authority. Examination of ambit and scope of Section 10(1) of the Act has been the subject matter of several judgments of

the Supreme Court and this Court. In *Dhanwant Kaur Butalia & Ors. v. Guru Nanak Public School & Ors., 2016 SCC OnLine Del 699*, a Division Bench of this Court while dealing with the claim of the Appellants therein for increase of salary under the 6th CPC recommendations, held as under:

“11. ...

The circular of 22.09.2008 enclosed the copy of Office Memorandum/letter dated 11.09.2008. This referred to the Central Government office Memorandum of dated 30.08.2008. The said memorandum categorically stated as follows:

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(iii) In terms of the CCS (RP) Rules, 2008, there shall be a uniform date of increment i.e. 1st July of the year after implementation of the revised pay structure. Consequently, in the case of employees whose date of next increment falls on 1.1.2006, the increment will be drawn in the pre-revised scale and pay fixed in accordance with the tables after including the increment. The next increment in the revised pay structure in such cases will be drawn on 1st July, 2006.”

12. *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.”

13. *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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15. *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.*

16. *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.*

21. This Court in ***Kuttamparampath Sudha Nair (supra)*** was in seisin of the issue pertaining to grant of 7th CPC benefits to the Petitioners who were employed in private recognized unaided minority school. Relying on several judgments of the Supreme Court in this context, this Court held as follows:

“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.....*

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.

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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.”*

22. Reference in this regard may be made to an order of this Court in **Mrs. Omita Mago & Ors. v. Ahlcon Public School & Anr.**, being **W.P.(C) 4979/2021**, passed on 24.03.2022, wherein examining the provisions of Section 10(1) of the Act, the Court held that the said

Section contemplates that pay and allowances of employees of recognized private schools cannot be less than those of the Government run schools and relying on the judgments in *Shashi Kiran & Ors. v. Siddharth International Public School & Anr.*, decided on 03.09.2021 in *W.P.(C) 2734/2021; Amrita Pritam and Others v. S.S. Mota Singh Junior Model School and Others, 2021 SCC OnLine Del 4470* and *Shikha Sharma (supra)*, wherein similar reliefs were granted, the Court allowed the writ petition, directing the School to refix the salaries and other emoluments of the Petitioners under 7th CPC and to pay the arrears within three months of the date of the order. In this regard, it will be useful to specifically allude to one of the observations of the Court in *Shikha Sharma (supra)*, where the Court has held that the benefits of 6th and 7th CPC have to be given even to the unaided minority schools by virtue of provisions of Section 10(1) of the Act, including arrears thereof and that since the employees are entitled to equal pay and other benefits by operation of a statutory provision, it does not presuppose approval being granted by the Directorate to the Schools to claim higher fee or arrears thereof.

23. Therefore, in view of the wealth of judicial precedents, the contention of the Petitioner that he is entitled to pay revision under the 7th CPC has merit and deserves to be accepted. I may now deal with two broad objections raised by the School to the grant of pay revision and arrears, which can be succinctly put as: (a) financial constraints of the School; and (b) delay and laches/restriction of arrears to three years. In view of the catena of judgments, on both aspects, which I shall advert to subsequently, both the objections are liable to be rejected.

24. Insofar as the plea of financial hardship put forth by the School is concerned, first and foremost, it is the stand of the Petitioner that

this defence is not factually substantiated by the Financial Statements of the School and is only a guise to deprive the Petitioner of the benefits sought and for this the Petitioner places heavy reliance on the findings of the report of the Audit team. This Court has perused the report whereby the Audit team has, after looking through the records produced by the School, including the cash books, balance sheets, etc., returned a finding that the School has sufficient funds to disburse the salaries and allowances in implementation of 7th CPC recommendations. Pertinent it is to note that the Audit team was constituted by the Deputy Director of Education for the sole purpose of ascertaining the financial viability of the School to release the benefits under the 7th CPC. Even otherwise and *dehors* the said Report, the issue that the Schools cannot plead financial hardship and paucity of funds as an aid to non-payment of revised emoluments and salaries under the Pay Commission's recommendations, is no longer *res integra* and stands decided by several judgments of this Court. I may profitably refer to the following passages from the judgement of this Court in *Shikha Sharma (supra)*:

“27. Having said that, the plea of Mr. Mishra is financial hardship. The same is not sustainable. The issue which falls for consideration is no more res integra in view of the judgment in the case Kuttamparampath Sudha Nair (supra), wherein in paragraphs 35 to 37, the Court has 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 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 & 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 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.”

25. This contention was also rejected by this Court in ***Shashi Kiran & Ors. (supra)*** and ***Mrs. Omita Mago & Ors. (supra)***. As far as the objection of restricting the arrears to a period of three years prior to the filing of the writ petition is concerned, the same is also untenable, in view of a recent judgment of the Supreme Court in ***Keraleeya Samajam and Another v. Pratibha Dattatray Kulkarni (Dead) Through Lrs and Others, 2021 SCC OnLine SC 853***, where it was

*“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.***

(Emphasis supplied)

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.”

26. The issue also arose for consideration before a Division Bench of this Court in ***Vidya Bharati School v. Directorate of Education & Ors.***, in ***LPA No. 541/2018*** decided on 16.09.2022 and relying on the judgment of the Supreme Court in ***Keraleeya Samajam and Another (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 DSE&R 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 recommendations, as pay revisions 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. Even in *Shikha Sharma (supra)*, this Court has directed release of arrears under 6th CPC to the Petitioners in the said case without any restrictions/limitation of three years prior to the filing of the writ petitions and in fact, has 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, the 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. Both the contentions of the School are thus rejected.

27. Petitioner stands terminated by the School by an order dated 29.03.2022, which has been assailed before the Delhi School Tribunal and the Appeal is pending adjudication. However, as rightly contended by learned counsel for the Petitioner this factor cannot come in the way of the Petitioner seeking re-fixation of his salary under the 7th CPC *albeit* till the date of his termination and consequent arrears, besides the benefits that he may be entitled in law, on termination, at this stage. [*Ref.: Sulochana Sharma and Purnima Rani v. Siddharth International Public School and Anr.*, decided on 21.03.2022, in *W.P. (C) 2586/2021 & 3117/2021*]. Since the order of

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termination is pending adjudication, this Court is not expressing any opinion on the same and needless to state, depending on the outcome of the proceedings, law will take its own course.

28. It is accordingly directed that the School shall refix the salary and other emoluments admissible to the Petitioner in accordance with 7th CPC and grant consequent arrears thereof within a period of eight weeks from today, In case of failure of the School to disburse the amounts due upon refixation, within the timelines granted by the Court, the School shall pay an interest on the amounts payable @ 6% per annum till the date of actual payment.

29. Writ petition is allowed in the aforesaid terms and disposed of.

JYOTI SINGH, J

DECEMBER 20, 2022/sn/shivam

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