



2024:DHC:6919



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

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Date of Decision: 20<sup>th</sup> August, 2024

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W.P.(C) 14814/2021

SADHNA PAYAL

.....Petitioner

Through: Mr. Anuj Aggarwal, Ms. Divya Aggarwal, Ms. Kritika Matta, Mr. Avinash Kumar, Mr. Narendra Pratap and Mr. Sidharth Nair, Advocates

versus

RUKMANI DEVI JAIPURIA PUBLIC  
SCHOOL & ANR.

.....Respondents

Through: Dr. M.Y. Khan, Advocate for R-1 along with Manager of the School.

Mr. Naushad Ahmed Khan, Advocate for R-2.

Mrs. Avnish Ahlawat, Standing Counsel with Ms. Laavanya Kaushik, Advocate also for R-2.

**CORAM:**

**HON'BLE MS. JUSTICE JYOTI SINGH**

### **JUDGMENT**

#### **JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking release of Gratuity and Leave Encashment with interest @ 18% per annum till actual payment.
2. Factual matrix to the extent necessary is that Petitioner was appointed as Assistant Teacher by Respondent No.1/Rukmani Devi Jaipuria Public School (hereinafter referred to as the 'School') on 07.07.1980 and was promoted to the post of Trained Graduate Teacher ('TGT') English on 01.04.1984 and thereafter as Post Graduate Teacher ('PGT') English on 01.09.1994.



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3. It is averred that when the School did not grant the pay revision to the Petitioner under 5<sup>th</sup> Central Pay Commission ('CPC'), which the Petitioner was entitled to by virtue of Section 10(1) of the Delhi School Education Act and Rules, 1973 (hereinafter referred to as the 'DSEAR'), Petitioner filed a writ petition in this Court along with other Teachers of the School being W.P.(C) No.5046/1999, which was allowed vide order dated 11.01.2010 and Court directed the School to refix the salaries of the Petitioners therein in terms of 5<sup>th</sup> CPC recommendations and grant arrears within three months. LPA bearing No.286/2010 filed by the School against the said order was dismissed by the Division Bench on 11.05.2012 with costs of Rs.15,000/-.

4. It is averred that in order to victimize the Petitioner for filing the writ petition, the School terminated her services by imposing a penalty of compulsory retirement vide order dated 13.07.2012. Petitioner challenged the penalty before the Delhi School Tribunal in Appeal No.41/2012 and vide order dated 19.04.2016, Tribunal set aside the penalty order and directed reinstatement with all consequential benefits. School challenged the said order by a writ petition being W.P.(C) No.6513/2016 before the Single Judge of this Court but the writ petition was dismissed vide judgment dated 05.03.2018 *albeit* granting liberty to the School to conduct an inquiry against the Petitioner, if so advised. Petitioner challenged the judgment dated 05.03.2018 passed by the learned Single Judge before the Division Bench in LPA No.214/2018 to the extent liberty was granted to the School to hold a *de novo* inquiry. The Division Bench upheld the order of the Tribunal reinstating the Petitioner with back wages and directed the School to forthwith appoint her with consequential benefits. School preferred an SLP against the judgment being SLP(C) No.10685-10686/2019 before the



Supreme Court, which was dismissed vide order dated 06.05.2019.

5. It is further averred that instead of complying with the orders of the Court, Petitioner was informed vide letter dated 07.01.2020 that she would stand retired on 09.01.2020 instead of continuing her till 30.04.2020. Thereafter, representations were made by the Petitioner objecting to her tenure being truncated as also seeking Gratuity and Leave Encashment but getting no response, she has filed the present petition.

6. Learned counsel for the Petitioner submits that after a prolonged litigation in which she was successful at every step, till date, Petitioner has not received the fruits of her success and has been denied Gratuity and Leave Encashment and the action of the School is not only illegal and arbitrary but also contemptuous *albeit* it is admitted by learned counsel, on instructions, that a sum of Rs.11,19,353/- has been received by the Petitioner towards part payment of Gratuity of Rs.20 lakhs, payable to the Petitioner. It is argued that the ground on which the School has denied Leave Encashment to the Petitioner is wholly misconceived that being a private recognized school, the School has its own rules and regulations and is not bound to pay Leave Encashment which is payable to employees of the Government School or other recognized aided schools. It is contended that the legal issue with respect to Leave Encashment is now settled by this Court holding that an employee of a private recognized School is entitled to the retiral benefit of Leave Encashment by virtue of Section 10(1) of DSEAR, which casts an obligation upon the private schools to pay monetary benefits payable to the employees of the Government Schools and in this context, learned counsel relies on two judgments of this Court in *Smt. Malti Dhawan v. Directorate of Education & Ors., 2017 SCC OnLine Del 6830* and *Amar Jyoti*



***Brahmachari v. Convent of Jesus & Mary School & Anr., 2023 SCC OnLine Del 6902.***

7. Mrs. Avnish Ahlawat and Mr. Naushad Ahmed Khan, learned counsels appearing on behalf of the Directorate of Education ('DoE') jointly submit that the School is an unaided private school recognized by the DoE under the DSEAR. DoE grants recognition to schools only when they fulfill the requirements of the provisions under DSEAR. Being a private unaided recognized school, there is a statutory liability on the School to pay allowances, retiral benefits and facilities at par with employees of the Schools of Delhi Government as mandated under Section 10(1) of DSEAR. As a matter of record, vide order dated 25.08.2017, DoE in exercise of powers conferred under Clause 9(xviii) of Rule 50 DSEAR, has directed Managing Committees of all private unaided recognized schools to implement CCS (Revised Pay) Rules, 2016. Insofar as Leave Encashment is concerned, School cannot absolve itself from the liability to pay Leave Encashment as this issue is no longer *res integra* and has been decided by this Court in the judgments relied upon by the Petitioner. Further, Rule 111 of DSEAR stipulates that '*Every employee of a recognized private school, whether aided or not, shall be entitled to such leave as are admissible to employees of a corresponding status in government schools*' and therefore, if as per the leave record of the Petitioner, she is entitled to Leave Encashment, the same cannot be denied to her on the frivolous ground that the School has its own rules and regulations.

8. Learned counsel appearing on behalf of the School, on the other hand, submits that being a private recognized School, it has its own Rules and is not bound to pay Leave Encashment under provisions of DSEAR and in this



context, relies on the judgment of the Jammu and Kashmir High Court in ***Project Construction Corporation Workers Association v. State of Jammu and Kashmir, AIROnline 2023 J&K 825***. Insofar as Gratuity is concerned, it is submitted that a sum of Rs.11,19,353/- has already been paid to the Petitioner vide cheque No. 169737 dated 21.12.2021. If the Petitioner has any further grievance, she must take recourse to appropriate remedy under the Payment of Gratuity Act, 1972, as amended from time to time.

9. Heard learned counsels for the parties and examined their rival contentions.

10. There is no dispute between the parties that the School is an unaided private school recognized by the DoE and governed by the provisions of DSEAR. Rule 59 of DSEAR entrusts the Managing Committee of the School the responsibility to manage the School in accordance with the provisions of DSEAR. Section 10 of DSEAR is a statutory provision and provides that 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 a school run by the Delhi Government. It is a settled position of law that provisions of Section 10(1) of DSEAR will apply even to unaided schools including unaided minority schools and in this context, I may refer to some passages from the judgment of this Court in ***Kuttamparampath Sudha Nair v. Managing Committee Sri Sathya Sai Vidya Vihar and Another, 2021 SCC OnLine Del 2511***, as follows:-

*“19. In order to decide the vexed question arising before this Court as to whether the provisions of Section 10(1) of the DSEA&R apply to private recognized unaided schools, provisions of Section 10 need to be examined and the same is extracted hereunder for ready reference:—*



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

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

*“20. Thus, Sections 8(1), 8(3), 8(4) and 8(5) do not encroach upon any right of minorities to administer their educational institutions. Section 8(2), however, must, in view of the authorities, be held to interfere with such right and, therefore, inapplicable to minority institutions. Section 9 is again innocuous since Section 14 which applies to unaided minority schools is virtually on the same lines as Section 9. We have already considered Section 11 while dealing with Section 8(3). We must, therefore, hold that Section 12 which makes the*



*provisions of Chapter IV inapplicable to unaided minority schools is discriminatory not only because it makes Section 10 inapplicable to minority institutions, but also because it makes sections 8(1), 8(3), 8(4), 8(5), 9 and 11 inapplicable to unaided minority institutions. That the Parliament did not understand Sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article 30(1) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article 30(1) is the price which the aided minority institutions have to pay to obtain aid from the government.”*

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

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*23. We must refer to the submissions of Mr. Frank Anthony regarding the excellence of the institution and the fear that the institution may have to close down if they have to pay higher scales of salary and allowances to the members of the staff. As we said earlier the excellence of the institution is largely dependent on the excellence of the teachers and it is no answer to the demand of the teachers for higher salaries to say that in view of the high reputation enjoyed by the institution for its excellence, it is unnecessary to seek to apply provisions like Section 10 of the Delhi School Education Act to the Frank Anthony Public School. On the other hand, we should think that the very contribution made by the teachers to earn for the institution the high reputation that it enjoys should spur the management to adopt at least the same scales of pay as the other institutions to which Section 10 applies. Regarding the fear expressed by Shri Frank Anthony that the institution may have to close down we can only hope that the management will do nothing to the nose to spite the face, merely to “put the teachers in their proper place”. The fear expressed by the management here has the same ring as the fear expressed invariably by the management of every industry that disastrous results would follow which may even lead to the closing down of the industry if wage scales are revised.”*



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

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

(emphasis supplied)

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

“11. The recognized private schools in Delhi whether aided or





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

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

*“11. The first proviso to Section 10 of the Delhi School Education Act, 1973 clearly obliges the Director of Education to direct the management of all recognized private schools to rectify any deficiency and to bring all benefits, including, inter alia, pensionary benefits up to the same level as those of employees of corresponding status of the schools run by the Director of Education. The second proviso further provides that in case the management of the school fails to comply with such directions, recognition of the school can be withdrawn under the powers given in S.4 of the Delhi School Education Act, 1973. This serves a salutary purpose and further empowers the Director of Education to issue appropriate directions aimed at fulfilling the object of Section 10(1) of the Act.*

*12. The school has been given certain privileges, including recognition, on condition, inter alia, that it complies with Section 10(1). Due to the non-compliance of the conditions by the respondent*



*school the petitioner cannot be made to suffer. If the respondent school does not come forward to honor its employees' entitlement in this behalf, then, steps need to be taken by the appropriate authority to ensure compliance.*

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

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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.”*

*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 section 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.”*

**31.** *Relevant paras of order dated 09.10.2019 are extracted as under:—*

*“Whereas, in accordance with Section 10(1) of Delhi School Education Act 1973, 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.*

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*And whereas, in exercise of the powers conferred under clause (xviii) of rule 50 of the Delhi School Education Rules, 1973, vide Competent Authority order No. DE. 15 (318)/PDB/2016/18117, dated 25.08.2017, the managing committees of all Private Unaided Recognised Schools have already been directed to implement Central Civil Services (Revised Pay) Rule, 2016 in respect of the regular employees of the corresponding status with effect from 01.01.2016 (for the purpose of pay fixation and arrears). Further, guidelines/detailed instructions for implementation of 7th CPC recommendations in Private Unaided Recognized Schools of Delhi has also been issued vide DoE order dated 17.10.2017.*

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*Now, therefore, the managing committees of all Private Unaided Schools are hereby once again directed to comply with the directions containing in order issued vide letter No. DE. 15 (318)/PSB/2016/18117 dated 25.08.2017, within 15 days, in order to implement Central Civil Services (Revised Pay) Rules, 2016 w.e.f. 01.01.2016 (for the purpose of pay fixation and arrears) in respect of the regular employees of the corresponding status in their schools as adopted by DoE for employees of government schools, failing which necessary action shall be taken as per the provisions of DSEAR, 1973, against the defaulting schools.”*

**32.** *In the short affidavit filed by the DOE before this Court, the same stand has been reiterated and relevant paras from the affidavit are as under:—*

*“7. That it is pertinent to mention here that vide order 25.08.2017, the competent authority of the Answering Respondent in exercise of the powers conferred under clause 9 (xviii) of Rule 50 DSEAR 1973, had directed the managing committees of all the private unaided recognized schools were directed to implement Central Civil Services (Revised Pay) Rule, 2016 in respect of the regular employees of the corresponding status with effect from 01.01.2016 (for the purpose of pay fixation and arrears). It is further submitted that guidelines/detailed instructions for the implementation of 7th CPC recommendations in private unaided recognized schools of Delhi were also issued by the Answering Respondent vide order dated 17.10.2017.*

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*9. That in view of the aforementioned orders dated 25.08.2017 and 09.10.2019, the Respondent School's reply dated 11.10.2019 was not found satisfactory by the Answering Respondent, therefore, the Answering Respondent issued another email dated 14.10.2019 to the Respondent No. 1 School directing it to comply with the provisions of DSEAR 1973 and submit the report of compliance within one week. Since no compliance report was received from the Respondent No. 1 School, the Answering Respondent sent reminder emails dated 17.10.2019, 23.10.2019, and 28.01.2020. A copy of the Answering Respondent's email dated 14.10.2019 by the Answering Respondent to the Respondent No. 1 School is being annexed herewith and marked as ANNEXURE R2/5. Copies of the reminder emails dated 17.10.2019, 23.10.2019, and 28.01.2020 to the Respondent No. 1 School are being annexed herewith and marked as ANNEXURE R2/6 (Colly).*

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14. It is submitted that whenever the managing committee or manager of any school neglects to perform any of the duties imposed on it by or under DSEAR, the Answering Respondent is authorized to either withdraw the recognition of the School or if it is expedient in the interests of school education, to take over the management of such school under Section 20 DSEAR. It is submitted that Section 10 of DSEAR provides for salaries and allowances to be paid to the employees and the consequences if the same are not being paid by the School. It is pertinent to mention here that if the teachers are not being paid salaries in terms of Section 10 DSEAR, the recognition of the School granted under Section 4 of DSEAR, can be withdrawn. ....

15. That as stated hereinabove, the Respondent School is liable to pay salary as per 7th CPC w.e.f 01.01.2016 and as per Section 10 DSEAR and if the same is not complied the Answering Respondent will take action against the Respondent School as per due process of law.” 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.”

11. From the various judgments of the Supreme Court, referred to in the aforesaid judgment and a plain reading of Section 10(1) of DSEAR, there can be no doubt that all private recognized schools are bound to follow the mandate of Section 10(1) of DSEAR and in this light, contention of the School in the present case that it is not covered under Section 10(1) of DSEAR only deserves to be rejected. The corollary to this is that all benefits that an employee of a government school with corresponding status is entitled, will have to be given to the employees of the present school, without any exception and this, to my mind, would also include the benefit





of Leave Encashment. Even otherwise, this issue is no longer *res integra* as rightly pointed out by the counsels for the Petitioner and the DoE and I may refer to the judgment in *Amar Jyoti Brahmachari (supra)*, where this Court *inter alia* dealing with the issue of Leave Encashment under Section 10(1) of DSEAR held as follows:-

**“31.** *Now dealing with issue whether the petitioner would be entitled to the benefit of leave encashment or not. Leave encashment refers to the translation of leaves into money. The Encashment of Earned Leave/Half Pay Leave standing at the credit of the retiring employee is admissible on the date of retirement subject to a maximum of 300 days. Rule 39 of the Central Civil Services (Leave) Rules, 1972, which deals with the Leave Encashment, which is relevant, is extracted for perusal of this Court in this regard-*

*“39. Leave/Cash payment in lieu of leave beyond the date of retirement, compulsory retirement or quitting of service*

*(1) No leave shall be granted to a Government servant beyond-*

*(a) the date of his retirement, or*

*(b) the date of his final cessation of duties, or*

*(c) the date on which he retires by giving notice to Government or he is retired by Government by giving him notice or pay and allowances in lieu of such notice, in accordance with the terms and conditions of his service, or*

*(d) the date of his resignation from service.*

*(2) (a) Where a Government servant retires on attaining the normal age prescribed for retirement under the terms and conditions governing his service, the authority competent to grant leave shall suo motu issue an order granting' cash equivalent of leave salary for earned leave, if any, at the credit of the Government servant on the date of his retirement, subject to a maximum of [300 days (including the number of days for which encashment has been allowed along with Leave Travel Concession while in service)].”*

**32.** *The aforesaid principle has been enunciated in the judgment of the Coordinate bench of this Court in Malti Dhawan v. Directorate of Education, 2017 SCC OnLine Del 6830 as follows:*

*“3. Petitioner will also be entitled to leave encashment benefit on account of her service with the respondent no. 2/school at the time of retirement in view of Section 10 of the Delhi School Education Act,*



*1973 because employees and teachers of private schools in Delhi have to be paid the same monetary benefits as are paid to employees and teachers of government schools and government aided schools. In government schools and government aided schools employees get leave encashment benefits and hence the petitioner is thus also entitled to leave encashment benefit from the respondent no. 2/school.”*

**33.** *In the instant petition, the petitioner submitted that as per the record, petitioner had 288 days' Earned Leave to his credit as on the date of his retirement for which he is liable to be paid.*

**34.** *This Court is of the view that the Petitioner having served as an employee in the respondent School is entitled to the retirement benefit of leave encashment as Section 10 DSEAR, 1973 read along with Rule 39 of Central Civil Services (Leave) Rules, 1972 casts an obligation upon the private schools to provide the same monetary benefits to their employees as are paid by government schools. Therefore, the petitioner Teacher is entitled to receive leave encashment for 228 days as per leave account of the petitioner.*

**35.** *In view of the foregoing discussion, this Court is of the view that the petitioner is entitled to grant of retiral benefits, i.e. gratuity and leave encashments of 288 days. Accordingly, issue pertaining to retiral benefits has been decided by this Court.”*

12. Additionally, Rule 111 of DSEAR also comes to the aid of the Petitioner and is extracted hereunder, for the ease of reference:-

***“111. Leave of absence***

*Every employee of a recognised private school, whether aided or not, shall be entitled to such leave as are admissible to employees of a corresponding status in government schools.”*

13. Plain reading of the Rule shows that every employee of a recognized private school, even if unaided will be entitled to leave as admissible to those of corresponding status in Government schools and there is thus no reason why the benefit of encashment of leave that an employee has accumulated during his or her service and not availed, be not granted at par with the employees of Government schools. The School has been unable to



show any statutory rule to the contrary that permits it to deny Leave Encashment to the Petitioner. The judgment of the Jammu and Kashmir High Court in *Project Construction Corporation Workers Association (supra)* will not aid the School as the Court was not in seisin of a provision *pari materia* to Section 10(1) of DSEAR, which as noted above mandates that the scales of 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 the school run by the appropriate authority and this Court in two judgments mentioned above has already ruled that by virtue of Section 10(1), the employees of recognized private schools shall be entitled to Leave Encashment.

14. It is accordingly held that Petitioner will be entitled to Leave Encashment *albeit* payment will be subject to her leave record. There is no dispute *per se* by the School with respect to the entitlement of the Petitioner to Gratuity and the pending issue is only respect to the quantum, as Petitioner has admittedly received part amount.

15. At this stage, learned counsel for the Petitioner submits that it would suffice if Petitioner is permitted to make a comprehensive representation to the School seeking Leave Encashment and balance payment of Gratuity, enclosing the detailed calculation of the amounts due for the ease of releasing the outstanding dues. In my view, this would be correct course of action since the calculations of the amounts due will be the domain of the School in the first instance.

16. Accordingly, this writ petition is partially allowed holding that Petitioner will be legally entitled to Leave Encashment and in this light permitting the Petitioner to make a comprehensive representation to the



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School for Leave Encashment and balance dues towards Gratuity. Detailed calculations will be furnished by the Petitioner for the amounts due as per the leave record in respect of the claim for Leave Encashment. As and when the representation is made by the Petitioner, the same shall be decided by the School within six weeks from the date of the receipt of the representation and whatever amounts are found to be due as per the service record of the Petitioner, will be released to her within two weeks thereafter. In case the Petitioner is still aggrieved by the amounts paid to her, she will be at liberty to bring to the notice of the School the discrepancy and in case of further surviving grievance, take recourse to legal remedies, as advised.

**JYOTI SINGH, J**

**AUGUST 20, 2024/kks/shivam**