



2024: DHC: 4049



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

% Judgment delivered on: 14.05.2024

+ **CONT.CAS(C) 1368/2022 & CM APPL. 63153/2023**

SMT. DHEERAJ SHARMA AND OTHERS Petitioner

versus

SH. NEERAJ CHANDRA & ORS Respondent

(2)

+ **W.P.(C) 10297/2019**

NUPUR MAHAJAN Petitioner

versus

LAXMI PUBLIC SCHOOL THROUGH
ITS MANAGER & ORS Respondent

(3)

+ **W.P.(C) 9769/2019 & CM APPL.33406/2021**

SMT. DHEERAJ SHARMA AND ORS Petitioner

versus

LAXMI PUBLIC SCHOOL & ORS Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ashok Agarwal, Mr. Kumar
Utkarsh, Mr. Manoj Kumar and Mr.
D.S. Rana, Advocates



For the Respondent : Mr. Pramod Gupta, Ms. Nicole Gomez,
Mr. Harsh Jaiswal and Ms. Adyanshi
Kashyap, Advocates for R-1 to 3.

Ms. Jyoti Tyagi and Mr. Hitanshu
Mishra for Mr. Yeeshu Jain, ASC for
DoE.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

W.P.(C) 10297/2019

W.P.(C) 9769/2019

1. These batch of writ petitions raise the following prayers:-

“i. issue any appropriate writ, order or direction, directing the Respondent school to pay to petitioner pay, allowances and other benefits including arrears of Dearness Allowance in terms of the 6th pay commission w.e.f 01.04.2006 and all the consequential benefits thereof at par with her counterparts-employees of the corresponding posts of the schools of the Delhi government;

ii. direct respondent school to implement the recommendations of the 7th pay commission in the case of the petitioner w.e.f 01.01.2016 and to revise her pay-scales and benefits accordingly at par with her counterparts working in the schools of the Delhi Government and to pay her consequent arrears of wages and benefits along with interest at the market rate;

iii. direct respondent school to pay to the petitioner due salary for the period 01.03.2016 to 17.04.2017;



iv. issue any appropriate writ, order or direction, directing the Respondent No.3/ Director of Education to take action in accordance with the provisions of Section 10 of the Delhi School Education Act, 1973 against the Respondent/School for aforesaid failures on the part of the Respondent/School;

V. pass any such other or further orders as may be deemed just and appropriate, in the facts and circumstances of the case and also in the interest, in favour of the petitioner; and

vi. allow the present writ petition with cost, in favour of the petitioner.”

2. The issue raised in the present writ petitions is no more *res integra* since the same has been settled by the Coordinate Bench of this Court in ***Mrs. Omita Mago & Ors vs. Ahlcon Public School & Anr*** bearing W.P.(C) No. 4979/2021 decided on 24.03.2022, ***Shikha Sharma vs. Guru Harkishan Public School*** reported in 2021 SCC OnLine Del 711, ***Amrita Pritam & Another vs. S.S.Mota Singh Sr. Model School & Others*** reported in 2021 SCC OnLine Del 4470, ***Kuttam Parampat Sudhanayar vs. Managing Committee, Shir Satyasai Vidyavihar and Another*** reported in 2021 SCC OnLine 5511. The issue on the entitlement of the employees of a particular school were decided on the facts of those cases, coupled with the fact that the relevant judgments were considered and, on principle, learned Coordinate Bench after having agreed, had allowed the writ petitions.

3. It has been given to understand that certain other judgments of the learned Single Bench are in appeal before the learned Division Bench of this Court, however, there is no stay granted against any of those. However, so far as the judgment of the learned Division Bench of this



Court in ***Bharat Mata Saraswati Bal Mandir Senior Secondary School vs. Vinita Singh & Ors.*** reported in **2023 SCC OnLine Del 3934**, there has been no challenge to the same before the Supreme Court as submitted. It is relevant to note that learned Division Bench in ***Bharat Mata*** (supra) has held in para 15 as under:-

“15. To conclude, it is reiterated that the reliefs claimed by the respondents in the writ petition were for payment of full salary as per recommendations of 7 CPC. Section 10 of the DSE Act provides that the scale of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of a recognized private school shall not be less than those of the employees of the corresponding status in the government school. The DOE in accordance with the DSE Act, 1973 has issued notification dated 17 October, 2017 directing that all recognized schools shall implement the recommendations of 7 CPC. In view thereof, it is the undisputed position of law that teachers of unaided private schools are entitled to the same pay and emoluments as those of government schools, in terms of the obligation enjoined upon the private recognized schools under the DSE Act, 1973. The schools cannot evade their statutory responsibility and are bound to pay the statutory dues.”

4. Learned counsel appearing for the respondent-school relies upon the judgments of the Supreme Court in ***Shiv Dass vs. Union of India and Others*** reported in **(2007) 9 SCC 274**, ***Union of India and Others vs. Tarsem Singh*** reported in **(2008) 8 SCC 648** and lastly on the judgment of the Supreme Court in ***Rushibhai Jagdishbhai Pathak vs. Bhavnagar Municipal Corporation*** reported in **2022 SCC OnLine SC 641** to sustain the submission that even if the petitioners are entitled to arrears without admitting to them specifically, the said arrears cannot be



granted for more than three years prior to the filing of the petitions.

5. This according to learned counsel has been well settled by the Supreme Court in the aforesaid judgments and has been postulated clearly in the judgment of ***Tarsem Singh*** (Supra).

6. *Per Contra*, Mr. Ashok Aggarwal, learned counsel for the petitioners submits these very submissions have already been dealt with in detail by the Coordinate Bench of this Court speaking through HMIJ Chandra Dhari Singh in the case of ***Anjali Vaid & Others vs. Adarsh World School & Others*** bearing W.P.(C) No. 3592/2022, decided on 20.11.2023, which is the subject matter of the Division Bench in LPA No. 762/2023 captioned ***Renu Arora & Others vs. S.T. Margaret Senior Secondary School & Another***. According to Mr. Aggarwal, this submission did not appeal to the learned Coordinate Bench and was rejected.

7. The contention raised on behalf of the respondent/school by relying on ***Tarsem Singh*** (supra) and ***Rushibhai*** (supra) has been succinctly considered by the learned Division Bench of this Court in ***DAV College Managing Committee Through its General Secretary vs. Seema Anil Kapoor and Another*** reported in **2023 SCC OnLine Del 2314** and dealt with in para 9 and 10 of the judgment. The same is reproduced as under:-

“9. It must at the outset be noticed that neither Rushibhai nor Tarsem Singh were dealing with benefits claimed as flowing from recommendations made by a Pay Commission. In Rushibhai, the writ petitioners had questioned the validity of the pay fixation order after almost seven years. Tarsem Singh was dealing with a claim for payment of disability pension along with arrears.



The employee there had raised the aforesaid issue for the first time by filing a writ petition in 1999 even though he stood relieved from service in 1983. Both Rushibhai and Tarsem Singh were therefore decisions rendered in the backdrop of individual claims raised by employees in respect of benefits asserted to have become due and payable while they were in service. Those employees essentially sought to raise claims with respect to benefits which according to them were due and payable while they were still in employment. While in Tarsem Singh, a claim for disability pension was raised long after the employee had been relieved from service, in Rushibhai the challenge to an order by which the claim stood decided was assailed after long delay. It was in the aforesaid backdrop that the Supreme Court observed that even if those claims fell in the genre of a continuing wrong, it was incumbent upon the employee to claim those benefits with due dispatch. It was in the that context that the Supreme Court had proceeded to frame the principle of arrears being restricted to a period of three years, the generally understood period of limitation for a money claim, prior to the initiation of action before a court.

10. In the considered opinion of this Court such claims clearly stand on a pedestal distinct and different from benefits which are stated to flow from recommendations made by a CPC. It would be pertinent to note that the salary of employees working in schools governed by the Delhi School Education Act, 1973 is governed by Section 10 thereof. The said provision reads thus:—

“10. Salaries of employees.-

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

Provided that where the scales of pay and



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

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

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

After having distinguished the ratio laid down by the Supreme Court in aforesaid two judgments, the learned Division Bench of this Court proceeded to direct the payment of arrears on the basis of 6th CPC and 7th CPC recommendations as on that date. Thus, the contentions raised by Mr. Gupta, learned counsel for the respondent are clearly untenable.

8. In that view of the matter, without going into the issue of the quantum of entitlement of each of the petitioners, this Court directs the respondent-school to apply the directions contained in para 13 and 14 of



the judgment dated 24.03.2022 in *Mrs. Omita Mago* (Supra). The same are extracted hereunder:-

“13. In view of the above, this writ petition need to be allowed and the respondent No.1 / School is directed to re-fix the salaries and other emoluments of the petitioners under 7th CPC in accordance with the rules and pay the arrears to the petitioners within a period of three months from today. It is made clear that the arrears shall not carry any interest, if the amount is paid within a period of three months. Any delay beyond the period of three months, shall entail an interest @ 6% per annum.

14. That apart, as regards the prayer of the petitioners that they have been paid salary with deduction from June 2020 till August 2021 is concerned, the unpaid salary shall also be paid, if not already paid, within the aforesaid period. Any delay beyond a period of three months, shall also entail an interest @ 6% per annum.”

9. As directed in the aforesaid judgment, the calculation and arrears of the petitioners shall be worked out and paid within a period of three months from today.

10. The petitions alongwith pending applications are disposed of in above terms with no order as to costs.

CONT.CAS(C) 1368/2022

11. In view of the judgment passed above, no orders are called for in the present contempt petition.

12. Accordingly, the contempt petition also stands disposed of.

TUSHAR RAO GEDELA, J

MAY 14, 2024

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