

# Mrs Omita Mago & Ors vs Ahlcon Public School & Anr on 24 March, 2022

**Author: V. Kameswar Rao**

**Bench: V. Kameswar Rao**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 4979/2021, CM APPL. 15265/2021

MRS OMITA MAGO & ORS.

..... Petitioners

Through: Mr. Ashok Aggarwal, Mr. Manoj Kumar and Mr. Kumar Utkarsh, Advs.

versus

AHLCON PUBLIC SCHOOL & ANR.

..... Respondents

Through: Mr. Amit Gupta, Adv. for R1.

Mr. Santosh Kumar Tripathi,

Standing Counsel, GNCTD with

Mr. Arun Panwar, Mr. Siddharth

Krishna Dwivedi and Mr. Aditya S

Jhadav, Advs. for R2.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% 24.03.2022

1. The petitioners, who are working as Teachers including pre-primary, Librarian, TGT and PGT in the respondent No.1 / School have filed the petition with the following prayers:

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

i) issue any appropriate writ, order or direction, directing the Respondent Ahlcon Public School to forthwith pay to the petitioners the amounts wrongfully deducted from their salaries from the month of June 2020 and onwards till date;

ii) issue any appropriate writ, order or direction, directing the Respondent Ahlcon Public School to fix the pay of the petitioners in terms of the 7th pay commission w.e.f 01.01.2016 and pay to petitioners pay, allowances, other benefits including arrears of salaries and all the consequential benefits;

iii) issue any appropriate writ, order or direction, directing the Respondent No.2/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;

iv) pass any other, order or direction or such further orders as may be deemed just and appropriate, in the facts and circumstances of the case and also in the interest of justice, in favour of the petitioners; and

v) allow the present writ petition with cost, in favour of the petitioners."

2. It is the submission of Mr. Ashok Aggarwal, learned counsel for the petitioners that the petitioners have not been paid complete salary w.e.f. June 2020 till date. According to him, the same has been paid with deductions. He also states that the petitioners are also not being paid salary, allowances and other benefits including Dearness Allowance ('DA' for short) in terms of the recommendations made by the 7th Central Pay Commission ('7th CPC', for short) w.e.f. January 01, 2016 as notified by the Govt. of NCT of Delhi.

3. According to him, despite many representations, no reply has been given by the respondent No.1 / School.

4. The respondent No.1 / School has filed a counter affidavit wherein a stand has been taken that the School is being run on a land allotted to the Society by the Delhi Development Authority ('DDA' for short) as per the industrial rates with a clear stipulation that it will admit 25% children belonging to Economically Weaker Section ('EWS' for short) and will provide Freeship in Tuition fee to such children and further the respondent No.1 / School will take prior permission from the Director of Education before increasing the fee.

5. It is also stated that under Section 10 of the Delhi School Education Act, 1973 ('DSE Act', for short), the scales of pay and prescribed benefits of the employees of a recognised unaided school shall not be less than the amount that is being allowed to the corresponding positions in the Schools of the Directorate of Education. As per Section 17(3) of the Act, the Manager of a recognized unaided private school shall file with the Director of Education, a full statement of fees to be levied during the ensuing academic session and no school shall charge, during that academic session, any fee in excess thereof without the prior approval of the Director.

6. According to the learned counsel for the respondent No.1, the fee is the only source of revenue for the respondent No.1 and a compatible fee structure conducive to meeting the remuneration and the service benefits to the staff, with infrastructural facilities, with all modern learning tools and provisions for future growth is the only requisite. The respondent No.1 has all along extended the pay scales to its staff right till the 6th CPC. The 7th CPC pay scales were introduced with effect from January 01, 2016, the orders for which were issued subsequently at a much later date. Following the past practice and in order to follow the provisions, the respondent No.1 had duly worked out the budget estimates for the year 2016-17 and in a meeting held in the month of November 2015, the said estimates were approved by the Management Committee of the respondent No.1 / School with the due representation of the Director of Education's Nominees with a 10% fee hike vis-a-vis the

2015-16 fee structure. The 7th CPC pay scales were not a part of the consideration at that time as it was still in the pipeline. The 10% hike was just to cover the normal inflation and to take care of the annual increments, two D.A. instalments and usual overall increase. The Director of Education for the reasons best known to them invited the proposals afresh in April, 2016 with the observations that the respondent No.1 had not taken the prior approval of the Director before raising the fee. The respondent No.1 informed the Director that since the decision was arrived at in the due presence of his nominees, the condition of prior approval stands fulfilled. The Director was further informed that the Management Committee of the respondent No.1 with the due representation of the Director of Education's nominee has all along been finalizing the budget estimates for the ensuing academic year including the fee structure. The Director of Education has also from time to time issued guidelines and instructions to its nominees to ensure that the provisions governing the finalization of the estimates are duly fulfilled while approving the same. Further, the Director has also issued instructions to its nominees to immediately bring to notice, any deviation in this regard, and thus it could easily be arrived at the concurrence of the nominee in itself carries the prior approval condition. The Director has never in the past made such an observation. That apart, the respondent No.1 also submitted the proposals afresh. After a prolonged exercise and inspecting those very documents which were already in the possession of the Directorate in the form of part of a return or a singular document, reached to a conclusion that the respondent No.1 has enough surplus funds and there was no need to increase the fee. The Directorate while arriving at the surplus figure had not taken into consideration the funds provided for the terminal benefits-like Gratuity etc. which as per the statutory provisions cannot be a part of the surplus. In between the 7th CPC pay scales were introduced and the Director issued a detailed order on October 17, 2017 inter alia permitting the schools to increase the fee to a certain percentage without seeking further approval of the Director and in case of any increase beyond that percentage, to refer the case to the Director. The Director in the said order himself admits an increase of 25% in fee due to implementation of 7th CPC. Later on, the Director withdrew the order for the reasons best known to him stating that this Court had issued such orders. The fact was otherwise, inasmuch as the order was withdrawn on the Director of Education's own accord. The Director thereafter invited proposals for the subsequent years much after the beginning of each academic year and again called afresh a number of documents and papers which already stood examined and which were already with them while deciding the 2016-17 and 2017-18 fee structure.

7. That apart, it is also stated that because of spread of the COVID-19 pandemic and the resultant lock down, the position further worsened. The respondent No.1 has been only allowed to charge tuition fee during this period, which was not sufficient enough to meet even the salary and terminal expenses. The only alternative left under the circumstances was to rationalize the expenses and the move to defer part of the D.A. Incidentally, even the Central Government in view of the crisis arising out of COVID-19 had frozen the D.A. instalments of January 2020, July 2020 and January 2021 till July 2021 and has also issued directions that the same should be restored prospectively only. The respondent No.1 has all along been sharing with the staff the financial crunch arising out of the lockdown imposed and the subsequent orders issued by the Directorate to only charge tuition fee. As and when the finances of the respondent No.1 improve, it will review the position and start restoring the deferred amount of D.A. which again could be possible only if the respondent No.1 was allowed to charge the full fee.

8. It is also stated that with the improving position, the respondent No.1 has started remitting the full salaries of the staff w.e.f. August 2021 as per their entitlement. The finances of the respondent No.1 do not allow the implementation of the 7th CPC and the sole reason for the same is that the Director of Education has not taken any decision on the fee proposal for the last five years.

9. Having heard the learned counsel for the parties, suffice to state that the issue which arises for consideration, i.e., grant of benefit under 7th CPC is no more res integra in view of Section 10 of the DSE Act which reads as under:

"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." The said Section contemplates that the pay and allowances of the employees of recognised private Schools could not be less than that of the employees of the Government run Schools.

10. The issue stands settled by the judgment of the Full Bench in the case of Guru Harkishan Public School v. Director of Education and Ors., (2015) 221 DLT 448 wherein this Court, while examining applicability of Rule 121 of the Delhi School Education Rules, 1973, though not in the context of Section 10 of the DSE Act, has in detail referred to the judgment of the Supreme Court in Frank Anthony Public School Employees' Association v. Union of India (UOI) and Ors., (1986) 4 SCC 707, and finally held that the pay and allowances of the employees of unaided minority Schools cannot be less than those of the employees of the Government run Schools. Hence, on that analogy, the petitioners herein, who are employees of an unaided private school are entitled to the benefits as is being given to the employees of the government run schools.

11. Having said that the only plea of the learned counsel for the respondent No.1 / School is financial hardship. The said submission is also unsustainable. This issue is also no more res integra in view of the judgment of this Court in Kuttamparampath Sudha Nair v. Managing Committee Sri Sathya Sai Vidya Vihar and Anr., W.P.(C) 928/2019, decided on May 06, 2021, wherein in paragraph 35 to 37 which I reproduce 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 noncompliance of a statutory mandate. In the context of payment of minimum wages, the Supreme Court in *Unichovi vs. State of Kerala*, AIR 1962 SC 12 and *Hydro (Engineers) Private Ltd vs. Workmen* 1969 (1) SCR 156 held that hardship to an employer to carry on its activity, on account of payment of minimum wages, is an irrelevant consideration for determination of minimum wages. The State assumes that every employer must be in a position to pay minimum wages before he resorts to employment. In *Air Freight Ltd. vs. State of Karnataka*, 1996 (6) SCC 547, this solemn principle was reiterated.

36. In the context of Section 10 (1) of DSEA&R, this Court had rejected the argument of paucity of funds as an irrelevant consideration in the case of *Samaj Shiksha Samiti vs. Delhi State Saraswati Shishu Bal Mandir Karamchari Kalyan* 2002 (97) DLT 802. In this context, I may quote a few passages from the judgment in *Veena Sharma (Mrs.) & Ors. vs. The Manager, No.1 Air Force School Palam & Ors.* 2005 VII AD (Delhi) 517 as follows:-

"18. Two things clearly emerge, from the above position. The respondent school is under an obligation to comply with the provisions of Section

10. This obligation is not relieved in any manner; rather, Section 4(1) reinforces this conclusion. Further, the Director and other authorities under the Act have no power to exempt any recognized school from its liability to comply with Section 10. The reliance of the school on the implied approval by the Central Government, is in my considered opinion of no consequence. There is no dispute about the fact that the Directorate itself has been insisting upon payment of salary and allowances in accordance with Section 10. Indeed that was the condition of recognition itself. The second issue is that financial hardship is also no consideration or ground to relieve an employer of his statutory obligation to pay what society has decreed as the minimum salary of teachers and staff, through the provisions of Section 10 of the Act.

19. The submission of learned counsel for the school that if the relief is granted and the pay scales have to be released in favour of the petitioners, a situation might arise leading to the close of the school is somewhat similar to the apprehensions voiced by the Management in *Frank Anthony* case (*supra*). The Supreme Court dealt with arguments in the following terms:-

"We must refer to the submissions of Mr. Frank Anthony regarding the excellence of the institution and the fear that the institution may have to close down if they have to

pay higher scales of salary and allowances to the members of the staff. As we said earlier the excellence of the institution is largely dependent on the excellence of the teachers and it is no answer to the demand of the teachers for higher salaries to say that in view of the high reputation enjoyed by the institution for its excellence, it is unnecessary to seek to apply provisions like Section 10 of the Delhi School Education Act to the Frank Anthony Public School. On the other hand, we should think that the very contribution made by the teachers to earn for the institution the high reputation that it enjoys should spur the management to adopt at least the same scales of pay as the other institutions to which Section 10 applies. Regarding the fear expressed by Shri Frank Anthony that the institution may have to close down we can only hope 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 right as the fear expressed invariably by the management of every industry that disastrous results would follow which may even lead to the closing down of the industry if wage scales are revised.

20. The submission of paucity of funds, has to be, therefore, rejected. The subjective or individual hardship of a management, that too sponsored by no less an Organization of the stature of Indian Air force, which even went to the extent of seeking to deny liability on the ground that the school caters to the children of JCOs (Junior Commissioned Officers) impliedly perhaps suggesting that the children of such employees can be taught without compliance with minimum standards imposed by law, cannot be countenanced."

37. In this regard, I am also fortified in my view by a judgment of a Co-ordinate Bench in Deepika Jain vs. Rukmini Devi Public School & Ors. W.P. (C) 237/2013 decided on 23.09.2013, where implementation of 6th CPC benefits was sought by the Petitioner and the Court held as follows:-

"3. I have held in many cases, including the case of Meenu Thakur Vs. Somer Ville School & Ors. W.P.(C) 8748/2010 decided on 13.2.2013 that paucity of funds is not a ground to not pay amounts as per the 6th Pay Commission Report and the order of the Director of Education dated 11.2.2009. A Division Bench of this Court in LPA 286/2010 titled as Rukmani Devi Jaipuria Public School Vs. Sadhna Payal & Ors. decided on 11.5.2012 has also held that paucity of funds is not a ground not to make payments as per the 6th Pay Commission Report."

12. Following the aforesaid judgments, even this Court in the case pertaining to grant of arrears of salary has also granted similar reliefs to the petitioners in the cases of Shashi Kiran & Ors. v. Siddharth International Public School & Anr., W.P.(C) No.2734/2021 and Amrita Pritam & Ors. v. S. S. Mota Singh Junior Model School & Ors., W.P.(C) 1335/2019 dated September 22, 2021. In a more recent judgment, this Court while deciding a batch of petitions with the lead matter being Shikha Sharma v. Guru Harkrishan Public School & Ors., W.P.(C) 3746/2020, decided on November 16, 2021, has granted the benefits of the 7th CPC along with the arrears to the petitioners therein.

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.

15. With the above, the petition is disposed of. No costs.

Dismissed as infructuous.

V. KAMESWAR RAO, J MARCH 24, 2022/aky