

Gaurav Arora vs Goodlay Public Schooland Ors on 11 October, 2023

Author: Satish Chandra Sharma

Bench: Chief Justice, Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI
LPA 518/2021 & CM APPLs. 47959/2021, 479
GAURAV ARORA

GOODLAY PUBLIC SCHOOLAND ORS

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

% 11.10.2023

1. The present Letters Patent Appeal ("LPA") is arising out of order dated 22nd December, 2021 in W.P. (C) No. 11582/2021, passed by the learned Single Judge of this Court. The underlying writ petition was filed seeking inter alia arrears and salary as per revised pay scale on account of recommendations of 6th Pay Commission i.e., w.e.f. 01st January, 2006 to 31st December, 2015 and 7th Pay Commission w.e.f. 01st January, 2016, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 17/10/2023 at 12:19:39 along with interest and consequential benefits including Modified Assured Career Progression ("MACP") scheme. A prayer was also made in the petition seeking directions to restrain the school from taking any coercive action against the petitioner.

2. The writ petition was dismissed by the learned Single Judge by way of the impugned order. It notes that no disciplinary proceedings had been initiated against the petitioner and as such, the prayer in that regard was premature. The benefit of MACP scheme was denied by placing reliance on the judgment of this Court titled *Manju Sipayya v. Directorate of Education and Ors.*,¹ which observed that ACP/ MACP cannot be granted in private unaided schools under the principle of equal treatment enshrined in Section 10 of the Delhi School Education Act, 1973, if no guidelines/ directives had been issued by the Directorate of Education to that effect. However, we note that the impugned order is silent in respect of disbursal of arrears/ salary in terms of the revised pay scale.

3. It is an undisputed fact that in a large number of cases, this Court has directed the schools in Delhi to pay revised salary to their employees keeping in view Section 10 of the Delhi School Education Act, 1973. In one such judgment titled *Greenfields Public School v. Anchla & Ors.*,² passed by coordinate bench of this Court, relevant portions whereof read as under:

"21. The statutory provisions governing the field as contained under Section 10 of the Act, 1973 provides for grant of pay and allowances to the employees of a recognized private school at par with the employees of corresponding school run by the appropriate authority (government schools and schools receiving grant in aid).

22. The aforesaid statutory provision makes it very clear that the teachers LPA 808/2017 and connected matter, dated 04 th November, 2019.

LPA 567/2023, dated 23rd August, 2023 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 17/10/2023 at 12:19:39 serving in private schools are also entitled for benefit of higher pay scale at par with the teachers/employees working in an Aided School/Government School keeping in view the recommendations of pay commissions.

23. It is an undisputed fact that the teachers working in aided schools/ Government Schools have been granted benefit of higher pay scale as per the recommendations of the 7th Pay Commission. The issue involved in the present case is no longer res integra and this Court in LPA 450/2022 titled *Ahlcon Public School Vs. Omita Mago and Ors.*, has dealt with a similar controversy. Paragraph Nos. 5 to 11 of the judgment passed by this Court in the aforesaid LPA reads as under:

"5. Mr. Jayant Mehta, learned Senior Advocate for the Appellant School, contends that fee is the only source of revenue available to the Appellant School. He states that the land on which the School is being run was allotted by the DDA in the year 1988 and one of the conditions while allotting the land was that the School would admit 25% of the children from the Economically Weaker Sections and will not charge any fee from such children. He states that under Section 17(3) of the Delhi School

Education Act, 1973, the School has to file with the Directorate of Education a full statement of the fees to be levied during the ensuing academic session and except with the prior approval of the Director, the school cannot charge any fee in excess of the fee as stipulated by the Department.

6. Mr. Mehta has drawn the attention of this Court towards the expenses which are to be incurred by the School in its day-to-day functioning and also the amount of pension, gratuity etc. which are to be paid to the retired teachers. He contends that the fee that is permitted to be charged by the school has to be approved by the Department and unless the Department of Education agrees for enhancement of fee, the school cannot increase its fee. He states that the school is in no position to pay the arrears of salaries.

7. Mr. Mehta points out that, as of today, for the year 2022-23, the total revenue for the Appellant School is Rs.23,01,35,984/- and the arrears of the 6th Pay Commission and the salaries as per the 7th Pay Commission and the other expenditure comes to Rs.23,72,76,000/- He states that there is a deficit of Rs.71,40,016/-. He states that until and unless the annual charges and development charges are increased by 10 per cent, it will take minimum five years for the Appellant School to pay the arrears of salaries. 8. Section 10 of the Delhi School This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 17/10/2023 at 12:19:40 Education Act, 1973 mandates that the scale of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognized private schools cannot be less than those working in the schools run by the Central Government, State Government, Municipal Corporation etc. Section 10 of the Delhi School Education Act, 1973 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."

9. Admittedly, the Appellant School is governed by the Delhi School Education Act, 1973 and Section 10 of the Act applies with all force. Paucity of funds cannot be a ground for permitting the school not to pay the emoluments to its employees. The said issue has been dealt with and has been answered against the schools in several judgments passed by this Court [Refer to: Kuttamparampath Sudha Nair v. Managing This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 17/10/2023 at 12:19:40 Committee Sri Sathya Sai Vidya Vihar and Anr., W.P.(C) 928/2019 decided on May 06, 2021; Shashi Kiran & Ors. v. Siifltharth 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 decided September 22, 2021; Shikha Sharma v. Guru Harkrishan Public School & Ors., W.P.(C) 3746/2020, decided on November 16, 2021].

10. All these judgments categorically negate the contention raised by the schools that they could not pay the teachers due to paucity of funds.

11. The Appellant School has no other alternative but to pay arrears of salary and emoluments to its employees as fixed by the 7th Pay Commission. There is no infirmity with the order passed by the learned Single Judge which requires interference by this Court."

24. In light of the aforesaid judgment delivered by this Court, the Respondents are certainly entitled to the pay scale recommended by the 7th Pay Commission."

xxx ... xxx ... xxx "28. Learned Counsel for the Appellant School has vehemently argued before this Court that the issue of fee hike is pending before this Court and it would not be in a position to pay revised salaries to the Respondents herein until it revises its fee. In the considered opinion of this Court, Section 10 and Section 17 of the Act, 1973 operate in different fields. Section 17 of the Act, 1973 reads as under:

"17. Fees and other charges. --

(1) No aided school shall levy any fee or collect any other charge or receive any other payment except those specified by the Director.

(2) Every aided school having different rates of fees or other charges or different funds shall obtain prior approval of the prescribed authority before levying such fees or collecting such charges or creating such funds.

(3) The manager of every recognized school shall, before the commencement of each academic session, file with the Director a full statement of the fees to be levied by such school during the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 17/10/2023 at 12:19:40 ensuing academic session, and except with the prior approval of the Director, no such school shall charge, during that academic session, any fee in excess of the fee specified by its manager in the said statement."

29. It is true that the aforesaid statutory provisions of law make it mandatory for a school to file with the Directorate of Education, a full statement of fee to be levied during the ensuing Academic Session, and except with the approval of the Director, the school cannot charge fee in excess of the fee as stipulated by the Education Department. However, the said provision does not benefit the case of the Appellant School. The issue regarding applicability of Section 17(3) has been dealt in judgment of the Division Bench of this Court in the case of Ahlcon Public School (supra), wherein a similar plea was raised and the Division Bench directed the Employer School therein to pay salaries of its employees as per the recommendations of the 7th Pay Commission. Therefore, the aforesaid plea raised by the Appellant School is of no consequence."

xxx ... xxx ... xxx "32. Learned Counsel for the School has vehemently also argued before this Court that the claim of the employees is barred by delay and laches. This Court in LPA 304/2023 titled D.A.V. College Managing Committee Through Its General Secretary Vs. Seema Anil Kapoor & Anr., has considered the issue of delay and laches. Paragraph No. 13 of the judgment passed by the Division Bench of this Court in the aforesaid case reads as under:

"13. It becomes pertinent to note that in Vidya Bharati School, the Division Bench had an occasion to notice the judgment rendered by the Supreme Court in Keraleeya Samajam and Another v. Pratibha Dattatray Kulkarni (Dead) Through LRs and Others⁷. Keraleeya Samajam too was a judgment which was rendered in the context of a claim for the payment of arrears as flowing from the 6th CPC. In Keraleeya Samajam the Supreme Court laid emphasis upon the obligation of the employer to implement the recommendations of the 6th CPC and the duties cast upon it in this respect. It was held that once the employer itself had faulted in implementing the recommendations of the CPC, the claim could not have been denied on the ground of delay or laches. We deem it apposite to extract the following paragraphs from the decision of the Supreme Court in Keraleeya Samajam:-

"5. Having heard Shri Shekhar Naphade, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 17/10/2023 at 12:19:40 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 nonteaching 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.

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.

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7. In view of the above and for the reasons stated above both these special leave petitions deserve to be dismissed and accordingly dismissed.

8. It is directed to the petitioners to clear the arrears within a period of eight weeks from today failing which it shall carry interest at 9%. The Deputy Director (Education), Nasik Division is hereby directed to see that the present order is complied with by the petitioners and the amount is disbursed to the respective respondents by account payee cheques."

33. In light of the aforesaid judgment, once the employer itself had faulted in implementing the recommendations of the Central Pay Commission, the claim cannot be denied on the ground of delay and laches. Therefore, in the considered opinion of this Court the learned Single Judge was justified in directing payment of salaries to the employees (Respondents herein) keeping in view the

recommendations of the 7th Pay Commission.

34. The other issue involved in the present case is grant of benefit under the MACP Scheme to the Respondents. While it is certainly within the domain of the School to adopt or not to adopt the MACP, however, once the school has adopted MACP scheme in respect of some of its employees, the school cannot be permitted to discriminate and deny the benefit of MACP to the Respondent Employees. Therefore, the learned Single Judge was justified in directing the Appellant School to grant all benefits under the MACP Scheme to the Respondent Employees also. Therefore, this Court does not find any reason to interfere with the judgment passed by the learned Single Judge.

35. In the considered opinion of this Court, especially in light of the fact that the School is also paying salaries to its employees as per the recommendations of the 7th Pay Commission at present, the benefit of the same cannot be denied to the Respondent Employees who have attained the age of superannuation, only on the ground that they have superannuated and, therefore, this Court does not find any reason to interfere with the judgment passed by the learned Single Judge. The present appeal fails and is accordingly dismissed. However, the School is granted three months' time to comply with the order passed by the learned Single Judge."

4. In light of the aforesaid judgment, the Appellant is certainly entitled This is a digitally signed order.

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5. Learned counsel for Respondent-School has referred us to paragraphs no. 3, 4 and 5 of the Respondent-School's affidavit dated 21st February, 2023, which read as under:

"3. It is humbly submitted that Respondent no. 1 has implemented recommendations of the 6th Central Pay Commission (hereinafter referred as "CPC") as per notification 29.02.2008, which was effective from 01.01.2006, and the same has been implemented for teaching and non-teaching staff w.e.f. 01.02.2009. The arrears from 01.01.2006 to 31.12.2009 were paid accordingly to all the regular employees of the school. The sheet of arrears paid to all employees is annexed herewith as ANNEXURE R1-1.

4. The school implemented the recommendation of 6th CPC in a following manner:

I. Fixed the salary of the employees in the pay scale of 6th CPC from February, 2009.

II. Collected the arrears from the parents of the students in installments and paid to the employees of the school in 20 installments.

III. Total amount Rs.1,12,48,385/- (Rupees One Crore Twelve Lakhs Forty Light Thousand Three Hundred Eighty Five) paid to the employees of the school in the form of arrears. The same is annexed herewith as ANNEXURE RI-2.

IV. Mr. Gaurav Arora/Petitioner AT cum Lab Assistant was paid arrears of Rs. 1,86,579/- (Rupees One Lakh Eighty Six Thousand Five Hundred Seventy Nine) in 20 installments. The calculation sheet is annexed herewith as ANNEXURE RI-3.

5. It is humbly submitted that the petitioner has been paid salary as per the 6th Central Pay Commission and there are no such arrears as per 6th Central Pay Commission, which are required to be cleared by the Respondent no. 1 & 2 qua to the petitioner."

[Emphasis Supplied]

6. The affidavit reveals that the Government issued the notification for paying the arrears of salary as per the 6th Pay Commission recommendations This is a digitally signed order.

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7. In respect of pay scale in terms the 7th Pay Commission, undisputedly the total amount of the pending dues has not been paid so far and balance dues, if any, have to be paid by revising the salary w.e.f. 01st January, 2016, as has been done in respect of all other teachers serving in Delhi.

8. Resultantly, the Respondent-School is directed to release all arrears/ emoluments to the Appellant as per the 7th Pay Commission, within a period of four weeks from today, failing which it shall carry an interest of 9% per annum.

9. It has been further brought to the notice of this Court that the services of the Appellant have been put to an end on 10th January, 2022 and therefore the arrears of salary have to be paid upto 10th January, 2022 from the date of entitlement to receive the same, as notified by the Government. So far as the order of termination is concerned - it is not the subject matter of the present dispute, the Appellant shall be free to take recourse to the remedies available under the law.

10. Mr. Jha, at this stage has drawn the attention of this Court towards order dated 18th January, 2022 by way of which this Court had directed the This is a digitally signed order.

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11. With the aforesaid, the LPA stands disposed of along with the pending application(s), if any.

SATISH CHANDRA SHARMA, CJ SANJEEV NARULA, J OCTOBER 11, 2023 as This is a digitally signed order.

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