

GOVERNMENT OF NCT OF DELHI
DIRECTORATE OF EDUCATION
(PRIVATE SCHOOL BRANCH)
OLD SECRETARIAT, DELHI-110054

No. F/226/2022-23/2763-2769

Dated: 25/10/2022

ORDER

Whereas, the Hon'ble High Court of Delhi in W.P. (C) No.3746/2020 titled as "Shikha Sharma Versus Guru Harkrishan Public School & Ors." vide judgement dated 16.11.2021 has directed as under:

"27. On the issue of grant of transport allowance / dearness allowance, the DoE in consultation of the GHPS in which petitioners, who sought such relief are working shall pass order, by considering the orders in the cases being CONT.CAS.(C) 46/2016 dated January 09, 2017 and in W.P.(C) 2132/2011 dated March 06, 2013 and instructions, if any, and convey the decision to those petitioners, within 10 weeks from today. Similarly, the claim of some petitioners for MACP in W.P.(C) 6407/2018, W.P.(C) 11152/2019 and W.P.(C) 12006/2019 shall be decided by the DoE in consultation with the GHPS in which the petitioners, who sought such relief are employed and convey the same to those petitioners, within 10 weeks from today. If the benefits are payable, the same shall be released to the petitioners within six months thereafter.

And whereas, in compliance of the above directions of the Hon'ble High Court, deliberations were held with the Principals of the Guru Harkrishan Public Schools i.e. GHPS Nanak Piao and GHPS Loni Road on 04.01.2022 and 07.01.2022, respectively.

And whereas, Governing Body of Guru Harkrishan Public School New Delhi Society has challenged the above judgement of the Hon'ble High Court of Delhi vide L.P.A. No.93/2022 titled as "Governing Body of Guru Harkrishan Public School New Delhi Society & Anr. Versus Harvinder Kaur Jaggi and Ors.

And whereas, the Hon'ble High Court of Delhi vide Order dated



02.09.2022 in above L.P.A. No.93/2022 titled as "Governing Body of Guru Harkrishan Public School New Delhi Society & Anr. Versus Harvinder Kaur Jaggi and Ors." has directed as under:

"6. In the respect of payment of TA, DA and MACP, the Government shall take a final decision with regards to the same positively within six weeks."

And whereas, Section 10 of Delhi School Education Act, 1973(hereinafter referred to as 'DSEA&R, 1973') deals with the salaries of employees of recognised private school. Section 10 of DSEA&R, 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 upto 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..."

And whereas, Section 12 of DSEA&R, 1973 envisages that "nothing in this chapter shall apply to an unaided minority school". The reference to "this chapter" in Section 12 refers to Chapter IV of DSEA&R, 1973 which stipulates



the terms and conditions of service of the employees of the private recognised school, covering Section 8 to 12 of DSEA&R, 1973.

And whereas, the constitutional validity of Section 12 DSEA&R, 1973 was challenged before the Hon'ble Supreme Court in **Frank Anthony public School Employees Association v. Union of India (1986) 4 SCC 707**, wherein, the Hon'ble Supreme Court, held as follows:

"...We, therefore, hold that Section 10 of the Delhi Education Act which requires that 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 and which further prescribes the procedure for enforcement of the requirement is a permissible regulation aimed at attracting competent staff and consequently at the excellence of the educational institution. It is a permissible regulation which in no way detracts from the fundamental right guaranteed by Art. 30(1), to the minority institutions to administer their educational institutions. Therefore, to the extent that Section 12 makes Section 10 inapplicable to unaided minority institutions, it is clearly discriminatory. ..."

And whereas, the Hon'ble High Court, Delhi vide its judgement dated 09.01.2017 passed in Cont. Cas (C) 46/2016 directed as follows:

"7. Today, Mr. Rahul Mehra, learned senior standing counsel for Govt. of NCT of Delhi has handed over a photocopy of the affidavit dated 6th January, 2017 filed in Cont. Cas.(C) 898/2016, which is taken on record. In the said affidavit, it has been stated as under:-

"6. Further, as per the queries mentioned in para 3 referred above by this Hon'ble Court, may like to request this Hon'ble Court that the answer to the above said queries may please be read in consonance of the above said Circular dated 27.10.1999, OM dated 29-08-2008 and read with order dated 11-02-2009 and answer to the above said queries may be as under:



- (i) *Transport Allowance shall not be admissible to the employees of Unaided Private Recognized Schools who have been provided free transport facility by the school.*
- (ii) *As regard to the query, it is most respectfully submitted that the employees*
- (iii) *who have not been provided the transport facility by the school are entitled for the Transport Allowance.*
- (iv) *As regard to this query, it is humbly submitted that the employees who are paying for commuting to their place of duty to the school for using its transport facility may be allowed the payment of Transport Allowance.”*

8. Though both the petitioners and respondent-School are aggrieved by the decision of the Directorate of Education, yet this Court disposes of the present contempt petitions by directing the respondents, other than the Directorate of Education, to make payments of the transport allowance as well as interest in accordance with learned Single Judge's order dated 6th March, 2013 as well as in accordance with the aforesaid affidavit of Directorate of Education within a period of twelve weeks.”

And whereas, the DoE vide Circular dated 15.10.2008 has directed the management of all private un-aided schools 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 respect of employees of Government Schools.

And whereas, the DoE, vide Order dated 25.08.2017, issued directions to the private un-aided schools for implementation of recommendation of 7th Central Pay Commission w.e.f. 01.01.2016 in their school and to pay the salaries, allowances etc. in accordance with the 7th CPC. Furthermore, the DoE vide Order dated 09.10.2019 issued directions, whereby, Managing Committees of all private un-aided schools have been directed to implement Central Civil Services (Revised Pay) Rules, 2016 in respect of the regular employees of the



corresponding status in their schools, as adopted by the DoE for employees of Govt. schools.

And whereas, it is relevant to state here that the Hon'ble High Court, Delhi in LPA No. 808/2017, Manju Sipayya Vs. Directorate of Education & Ors. has observed as follows:

"22. MACP Scheme came into force w.e.f. 01.09.2008. Respondent no. 1, vide its office circular dated 05.10.2008, directed the schools to implement the 6th Pay Commission recommendations, however, no Guidelines have been issued till date for implementation of the MACP Scheme in private unaided recognized schools.

Therefore, reliance cannot be placed on Section 10 of the Delhi School Education Act, 1973 as respondent no. 1 has nowhere mandated the implementation of MACP Scheme for private unaided schools..."

And whereas, it is relevant to mention here that the "Modified Assured Career Progression Scheme" (MACP) was implemented on the basis of recommendations of the 6th Pay Commission. The 6th Pay Commission at para 6.1.15 of the report mentions about MACP scheme under the head of "Promotion Policy". It is clear that the MACP Scheme recommended by 6th pay Commission has been dealt separately under the promotion policy to ensure that the employees do not stagnate at any point in their career. Therefore, the MACP Scheme is a part of Service matter (Promotion Avenue) and not a part of pay and allowance.

And whereas, it is pertinent to mention here that prescribed benefits stated in Section 10(1) of DSEA&R, 1973 are defined under Rule 125 of DSEA&R, 1973 which provides for Children's Education Allowances, Reimbursement of Tuition fees, Travelling allowance and daily allowance and Leave Travel Concession. Further, it is pertinent to mention here that the MACP scheme is not covered under any of the entitlements mentioned in Section 10(1) of DSEA&R, 1973 read with Rule 125 of DSEA&R, 1973, however, the DoE has issued direction for implementation of 6th CPC in private unaided recognized schools in Delhi vide order dated 05.10.2008 but the DoE has not issued any direction any order or guidelines for implementation of MACP Scheme in private



unaided recognized schools in Delhi. Further, infact, the DoE has also not imposed any restrictions on the Private Unaided Recognized Schools to extend the benefits of the MACP Scheme to their employees and they can voluntarily provide the same. However, the schools which have implemented the MACP Scheme cannot deny the benefits of the same to any of its employee on the basis of pick and choose policy as this will amount to discrimination which is not permissible under Law.

And whereas, Article 30 (1) of the Constitution of India confers that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. It clearly manifest that autonomy of the minority institution is sacrosanct. So, it is discretion of the managing committee of minority school to implement the MACP scheme in accordance to need and welfare of its employees, if it deems fit.

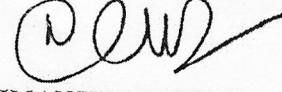
Now therefore, keeping in view of the above and in compliance of Order passed by the Hon'ble High Court, Delhi in L.P.A 93/2022 titled as "Governing Body of Guru Harkrishan Public School New Delhi Society & Anr. Versus Harvinder Kaur Jaggi and Ors.", all the schools run by managing committee of Governing Body of Guru Harkrishan Public School are hereby directed to ensure the following:

- (i) Salary of its employees shall include T.A. as per the Sixth and Seventh Pay Commission as implemented in respect of employees of Govt. School subject to:
 - a) Transport Allowance shall not be admissible to the employees who have been provided free transport facility by the school.
 - b) The employees who have not been provided the transport facility by the school are entitled for the Transport Allowance.
 - c) The employees who are paying for commuting to their



place of duty to the school for using its transport facility may be allowed the payment of Transport Allowance.

- (ii) Salary of its employees shall include D.A as per the Sixth and Seventh Pay Commission as implemented in respect of employees of Govt. School.



(HIMANSHU GUPTA)
DIRECTOR (EDUCATION)

To,

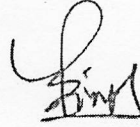
The Chairman,
Governing Body of GHPS (New Delhi)
Purana Quilla Road, New Delhi-110001

F.No.

Dated:

Copy to:

1. P.S. to Secretary (Education), Old Sectt., GNCT of Delhi.
2. All Regional Director (Education), GNCT of Delhi
3. All Dy. Director of Education (District), GNCT of Delhi to ensure compliance of the abovesaid directions.
4. All Dy. Director of Education (Zone), GNCT of Delhi to ensure compliance of the abovesaid directions and to serve the copy of this Order to GHPS School(s) under their jurisdiction.
5. OS (IT) with request to upload the Order on website of DoE in Public Circular/Order.
6. Guard File.



(YOGESH PAL SINGH)
DEPUTY DIRECTOR OF EDUCATION (PSB)