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

Date of Decision: 12th August, 2026

\# **CNR No. DLHC010950022024**

\+ W.P.(C) 17482/2024

SARITA SAINI .....Petitioner

Through: Mr. R. K. Saini and Mr. Abhishek, Advocates.

versus

GOVT OF NCT OF DELHI AND OTHERS .....Respondents

Through: Mr. Gaurav Dhingra and Mr. Shashank Singh, Advocates for R-1.
Mr. Pardeep Kumar and Ms. Sanskriti, Advocates for R-4.
Mr. Arun Birbal and Ms. Nidhi Sharma, Advocates for NDMC.

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\# **CNR No. DLHC010361802021**

\+ W.P.(C) 13268/2021, CM APPL. 41873/2021, CM APPL. 6876/2023, CM APPL. 7767/2024, CM APPL. 74226/2024 & CM APPL. 49851/2025

MRS. YASH SALUJA AND ORS .....Petitioners

Through: Mr. Rakesh Munjal, Senior Advocate with Ms. Sana Ansari, Mr. Ayush Gandhi and Ms. Hardeep Kaur, Advocates.

versus

GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI & ORS. .....Respondents

Through: Mr. Ripin Sood, Advocate for R-1.
Mr. Pardeep Kumar and Ms. Sanskriti, Advocates for R-4.
Mr. Arun Birbal and Ms. Nidhi Sharma, Advocates for NDMC.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. Can pension, lawfully earned by an employee of an aided school and paid for years after retirement, be discontinued because the school later closes down? That is the short question in these petitions.

2. W.P.(C) 13268/2021 has been filed by retired teachers of R.M. Arya Girls Primary School. Ms. Sarita Saini, who was originally arrayed as Petitioner No. 9 therein, has subsequently filed W.P.(C) 17482/2024. In view of the differences that arose between her and the remaining Petitioners, she sought leave to pursue her claim independently. Since both petitions have been heard together and arise from the same set of facts and raise a common question for consideration, CM APPL. 74226/2024, filed in W.P.(C) 13268/2021, is allowed. Ms. Saini shall accordingly stand deleted from the array of Petitioners in W.P.(C) 13268/2021, and her claim shall be considered separately in W.P.(C) 17482/2024. In view thereof, the objection raised by the NDMC that Ms. Saini was pursuing parallel remedies no longer survives.

3. The material facts are largely undisputed. R.M. Arya Girls Primary School was a recognised school receiving 95% grant-in-aid from the New Delhi Municipal Council.[1] The retired employees superannuated from the Respondent School after completing the requisite service; their pensionary entitlements were accepted; and pension was paid for substantial periods thereafter. Family pension was likewise being paid in the cases where it had

[1] "NDMC"

become due. Ms. Saini, for instance, retired as an Assistant Teacher on 30th April, 2009, and continued to receive pension until February, 2021. The pension statement placed on record also reflects payment to her and to several of the other pensioners immediately before the present dispute arose.

4. The school was functioning from rented premises. An eviction order came to be passed in respect of the said premises on 3rd May, 2017. The challenge to the eviction order eventually failed before this Court on 2nd December, 2020. SLP(C) No. 96/2021, preferred against the said order, was thereafter dismissed by the Supreme Court on 18th January, 2021. While declining to interfere with the order, the Supreme Court granted the management time until 30th June, 2021 to hand over peaceful and vacant possession of the premises.

5. With the date for vacating the premises approaching, the management addressed a letter dated 27th February, 2021 to NDMC seeking permission to close the school under Rule 46 of the Delhi School Education Rules, 1973[2]. The letter also sought adjustment of the students, absorption or adjustment of the serving staff, and appropriate action concerning the pensionary benefits of the retired employees.

6. The school vacated the premises and ceased to function on 30th June, 2021. Its students were thereafter accommodated in NDMC schools. During the pendency of W.P.(C) 13268/2021, pension and arrears were released to the Petitioners up to 30th June, 2021. The surviving grievance is therefore confined to the non-payment of pension from 1st July, 2021 onwards.

7. There is some dispute as to whether the closure had the prior approval contemplated by Rule 46. NDMC, in its original counter affidavit, stated

that permission to close the school had been granted under that provision. In a later affidavit, however, it took the contrary position that no such approval had ever been granted.

8. That dispute need not be resolved in these petitions. The Petitioners do not seek absorption, nor is any claim made for salary as members of surplus staff. Whether the closure complied with Rule 46 may bear upon the rights of the serving employees and upon the financial liability as between the management and NDMC. It does not, by itself, answer the question: whether closure of the school can bring to an end pension or family pension that had already become payable under the applicable pension regime.

9. Counsel for the Petitioners submits that it cannot. The retired employees had completed the qualifying service, their pension had been sanctioned and, in several cases, paid for years. The family pensioners had likewise been receiving family pension before the school closed. Reliance is placed on Section 10 of the Delhi School Education Act, 1973[3], Rule 126 of the Rules, the procedure framed thereunder, and the decision of the Supreme Court in ***Smt. Shakuntala Mehrishi v. New Delhi Municipal Committee***[4] and this Court in ***Manju Tomar v. NCT***.[5] The submission, in substance, is that a pensionary entitlement which has already arisen cannot be undone by a later dispute concerning closure or funding.

10. The erstwhile management supports the Petitioners. Its position is that the prescribed contribution towards pension had been made during the service tenure of the employees and that pension, after retirement, was being

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[2] "the Rules"
[3] "the Act"
[4] (1990) 3 SCC 521.
[5] LPA 441/2009, decided on 9th December, 2009.

disbursed through NDMC. The management maintains that closure of the school at a later point of time cannot affect pension earned for service already rendered. The Court records this as the stand of the management. Whether every contribution payable by it was in fact deposited does not require determination in these proceedings.

11. NDMC contests the claim. Its principal submission is that once the school ceased to exist and its recognition came to an end, the Petitioners could no longer answer the description of an "employee" under Section 2(h) of the Act. It further contends that neither the Act nor the Rules provide for payment of pension to former employees of a school after its closure, and that Rule 47 can operate only where the closure itself complies with Rule 46. Reliance is placed principally on ***New Delhi Municipal Council v. Manju Tomar***,[6] and also on ***M.S. Tomar v. National Commission for Scheduled Castes***,[7] ***S.P.S. Rana v. National Seeds Corporation***[8] ***and Indu Shekhar Singh v. State of U.P***.[9]

12. The issue is best approached through the statutory scheme. Section 10 (1) of the Act places pension, gratuity and provident fund in the same statutory setting as pay, allowances and medical facilities. In material part, it provides as follows:

> *"(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*

[6] 2024 INSC 635.
[7] 2023 SCC OnLine Del 1627.
[8] 2007 (99) DRJ 227.
[9] (2006) 8 SCC 129.

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."

13. NDMC's reliance on Section 2(h) does not assist its case. The provision defines an "employee" as a teacher and includes every other employee working in a recognised school. A definition clause, however, cannot be read in isolation from provisions which expressly confer a benefit payable after employment has ended. If the expression "working in a recognised school" were understood as a continuing condition for receipt of pension, every employee would fall outside the statutory scheme upon retirement. That plainly cannot be the meaning of a statute which expressly provides for pension and gratuity. Section 2(h) identifies the employment from which the pensionary right originates. It does not prescribe continued employment, or the continued existence of the school, as a condition for payment after retirement.

14. The Petitioners also invoke Rule 72. In material part, it provides that where aid to a school has been stopped, reduced or suspended and the managing committee consequently fails to deposit its share of the salaries and allowances of the employees, the Administrator shall pay, or cause to be paid, that share and utilise the amount towards payment of the salaries and allowances of the employees.

15. The Court does not consider Rule 72 determinative of the present controversy. Its language concerns the management's share of "salaries and

allowances" where aid has been stopped, reduced or suspended. It does not expressly deal with payment of pension after a school has permanently ceased to function. The Petitioners do not need to enlarge its reach. Their pensionary entitlement arises independently under Section 10, Rule 126 and the procedure framed pursuant to Rule 126.

16. ***Smt. Shakuntala Mehrishi*** bears directly on the issue. The Petitioner there had served as a teacher in R.M. Arya Girls Pathshala. Examining the pension scheme framed under Rule 126, the Supreme Court held that the CCS (Pension) Rules applied and that pension became payable from the date on which the employee ceased to be borne on the establishment upon superannuation. The Court then dealt with the contention that the modalities concerning contribution to the pension fund had not been finalised. It rejected that objection in terms which are particularly relevant here:

> *"Rule 35 of these Rules provides that a superannuation pension shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement. Rule 83 of these Rules, on the other hand, inter alia, lays down that the pension shall become payable from the date on which a government servant ceases to be borne on the establishment. Since these Rules will apply to the petitioner as contemplated by notification dated 17th October 1975, she is obviously entitled to get pension with effect from the date on which she ceased to be borne on the establishment of the school in which she was working consequent upon reaching the age of superannuation. Rule 126 of the Rules under which the notification dated 17th October, 1975 had been issued gives the power to specify procedure for payment of pay and allowances, pension and gratuity etc. to the Administrator in consultation with the Accountant General, Central Revenues. The very opening words of the said notification make it abundantly clear that the said notification had been issued in exercise of the powers conferred by Rule 126 of the Rules by the Administrator in consultation with the Accountant General, Central Revenues. The notification having thus been issued by the competent authority and the petitioner who was an existing employee of an aided school on the date of the issue of the said notification having opted for the pension and gratuity within the stipulated period in the prescribed proforma*

> *which was duly counter-signed by the Education Officer, she obviously became entitled to the benefits conferred by the said notification. This is so all the more in view of the fact that the notification dated 17th October, 1975 did not contemplate finalisation of the modalities about contribution towards pension fund as a condition precedent to the entitlement of the benefits under the said notification. The finalisation of the said modalities was a matter of details among the authorities concerned and could have no bearing on the entitlement to the benefits of the notification dated 17th October, 1975. Such finalisation could not even defer the date of the entitlement.”*

17. NDMC has placed reliance on the judgment of the Supreme Court in ***NDMC v. Manju Tomar***, whereby it was held that the protection of Rule 47 could not be invoked by the management of a school which had closed without the prior approval required under Rule 46. The closure contemplated by Rule 47, the Court held, must be a valid closure, and the management could not shift to NDMC the burden of re-employment and payment of salaries of teaching and non-teaching staff rendered surplus by an unlawful closure. That holding concerns employees who became surplus upon closure and the obligation to absorb them. It does not decide whether pensionary rights which had already accrued to retired employees stand extinguished merely because the school was subsequently closed without complying with Rule 46.

18. The manner in which the Supreme Court dealt with NDMC’s own appeals in the aforesaid case is equally significant. The Court recorded that the Division Bench had required NDMC to bear, in the first instance, the pay and other service benefits, including pension, while permitting it to seek reimbursement from the management. It further noted that, during the pendency of the appeals, NDMC had already paid the principal amount towards salary, pension and other retiral benefits. The Supreme Court

declined to interfere with the direction for payment of interest, directed NDMC to pay the remaining dues, and preserved its right to seek reimbursement from the management. The final disposition therefore furnishes no support for the proposition that pension already earned is lost because the school closed without complying with Rule 46. It instead preserves a distinction which is material here: payment of the employee's dues on the one hand, and adjustment of financial liability between NDMC and the management on the other.

19. NDMC also relies upon an interim order dated 30th August, 2010 in the same proceedings, under which the management was directed to pay pension during the pendency of the appeals. That was an interim arrangement as to which party would make the payment while the dispute remained *sub judice*. It did not determine the pensionary rights. More importantly, an interim arrangement cannot be read independently of the final judgment, which ultimately directed NDMC to discharge the remaining dues while leaving its right of reimbursement intact.

20. ***M.S. Tomar*** arises in an altogether different setting. The Petitioner there had been dismissed from service, was a provident fund optee and had never opted for the pension scheme during service. He later sought compassionate allowance under the Bank of India Pension Regulations. The Court held that eligibility for pension was a condition precedent to consideration of compassionate allowance and declined to extend that benefit to a person who had no underlying pensionary entitlement. The distinction is evident; the Petitioners before this Court are not seeking entry into a pension scheme to which they never belonged. Their pensionary entitlements had already been recognised, sanctioned and acted upon. The

question is whether those existing entitlements could thereafter be discontinued for a reason which finds no place in the governing pension scheme.

21. ***S.P.S. Rana*** also does not assist NDMC's case. The principle invoked from that decision is that a Court cannot supply an omission in statutory rules by introducing a condition which the rule-making authority did not provide. There is no occasion to do so here. The right to pension is already found in Section 10 and Rule 126. The omission, if any, lies elsewhere: NDMC has been unable to point to any provision under which that right ceases upon closure of the school. The Petitioners do not ask the Court to create a pensionary entitlement where none exists; they assert an entitlement which had already accrued under the governing scheme and had been recognised and acted upon by the authorities. ***Indu Shekhar Singh***, which dealt with the transfer and permanent absorption of employees drawn from different statutory organisations, also stands on a different footing altogether. No question of absorption arises in the pension claims before this Court.

22. The record contains one further circumstance which is consistent with this statutory position. On 9th June, 2021, barely three weeks before the school ceased to function, NDMC issued an office order extending the 7th Central Pay Commission[10] regime to its three aided and recognised schools, expressly including both shifts of R.M. Arya Girls Primary School. The instruments adopted by that order included the revision of pension of pre 2016 pensioners and family pensioners in accordance with the 7th CPC scales. This order is not the source of the Petitioners' right to pension, nor

does the Court treat it as such. It, nonetheless, shows that immediately before the closure, NDMC itself continued to administer the statutory pension regime in respect of the pensioners of these aided schools. That contemporaneous position sits uneasily with the present contention that pension depended upon the continued functioning of the school.

23. This, ultimately, is where NDMC's argument falters. It treats pension as though it were a recurring incident of the school continuing to function. It is not. The aided status of the school and the qualifying service rendered by its employees furnished the legal basis on which pensionary rights arose. Those rights had matured under the applicable scheme before the school closed, whether as pension payable to the retired employee or as family pension derived from that service. A later event affecting the institution cannot, without statutory authority, reach back and undo them.

24. The consequence of NDMC's construction would be grave and anomalous. A teacher may serve for decades in a recognised aided school, retire, have pension sanctioned and receive it for years, yet, if the school closes thereafter, the pension ceases the following month. Neither the Act nor the Rules nor the procedure governing pension produces such a result. More importantly, NDMC has identified no provision under which a pension validly earned and sanctioned ceases merely because the institution in which the qualifying service was rendered subsequently closes.

25. The Petitioners also rely on ***D.S. Nakara v. Union of India***,[11] ***Chairman, Railway Board v. C.R. Rangadhamaiah***,[12] and ***U.P.***

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[10] "CPC"
[11] (1983) 1 SCC 305.
[12] (1997) 6 SCC 623.

Raghavendra Acharya v. State of Karnataka.[13] The decisions approach pension in different factual settings, but the principle relevant here is settled: pension is not a bounty dependent upon grace; it is a benefit earned by past service, and a pensionary right which has accrued under the governing rules cannot be taken away to the prejudice of the retiree without authority of law.

26. The age and circumstances of the Petitioners explain the hardship caused by the stoppage of pension, but hardship is not the basis of the decision. The answer lies in the statutory scheme. These are not claims to a discretionary payment. The Petitioners seek continuation of pensionary benefits which had arisen from service rendered while the school was recognised and aided, had been sanctioned under the applicable regime and had, in fact, been paid before the present dispute arose.

27. That leaves the question of payment. The school received 95% grant in aid from NDMC, and the pensionary benefits were administered within that statutory arrangement. Section 10 and the procedure framed under Rule 126 contemplate a contribution from the management towards pension and other service benefits. There may remain questions between NDMC and the erstwhile management as to the extent of their respective financial liabilities after closure, particularly in view of the controversy surrounding Rule 46. Those questions need not, and should not, be resolved at the cost of the pensioners.

28. The course adopted in ***Manju Tomar*** provides the appropriate answer. Payment of an accrued pensionary entitlement cannot be made to await resolution of an accounting dispute between the authority administering the grant and the erstwhile management. NDMC shall therefore discharge the

[13] (2006) 9 SCC 630.

pensionary dues in the first instance. It will remain open to NDMC to recover from the management such amount as may be recoverable in accordance with the Act, the Rules, the applicable pension scheme and the law declared in ***Manju Tomar***. Nothing in this judgment determines the *inter se* liability between them.

29. The Petitioners have remained without their monthly pensionary payments for a considerable period despite a subsisting entitlement. Release of the principal arrears alone would not fully compensate for the delay in receiving sums which ought to have been paid periodically. In these circumstances, simple interest at 6% per annum from the respective due dates until payment would be just.

30. The petitions are accordingly allowed with the following directions:

(i) The refusal to continue pension and family pension after the school ceased to function, on the ground of its closure, is held to be unsustainable.

(ii) NDMC and its Director (Education) shall calculate and release to each Petitioner the arrears of pension or family pension, as the case may be, from 1st July, 2021, until the date of actual payment. The computation shall include all revisions otherwise admissible under the applicable pension regime, including the revision flowing from the office order dated 9th June, 2021, wherever applicable.

(iii) The exercise shall be completed, and payment made, within eight weeks from today. If, upon reconciliation, any pensionary amount or revision pertaining to the period prior to 1st July, 2021 is found to remain unpaid to any Petitioner, after giving credit for amounts already released during the pendency of these proceedings, that amount shall also be paid within the same period.

(iv) The arrears of pension and family pension shall carry simple interest at 6% per annum from the date on which each monthly payment fell due until the date of actual payment.

(v) Upon clearance of the arrears, pension or family pension shall continue to be remitted regularly to the respective bank accounts of the Petitioners in accordance with the applicable pension rules.

(vi) These directions are without prejudice to the right of NDMC to seek contribution, reimbursement or recovery from the erstwhile management to the extent permissible in law. The payment of pension or family pension to the Petitioners shall not await, or be made contingent upon, such recovery.

31. The writ petitions are allowed in the aforesaid terms. CM APPL. 74226/2024 is allowed in terms of Paragraph No. 2 above. All other pending applications stand disposed of.

SANJEEV NARULA, J

AUGUST 12, 2026/*hc*