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

% *Date of Decision: 14th August, 2024*

\+ W.P.(C) 9670/2015 and CM APPL. 23083/2015

ST. GEORGE SCHOOL .....Petitioner

Through: Mr. Romy Chacko, Mr. Sachin Singh Dalal, Mr. Akshat Singh and Ms. Himani Sharma, Advocates.

versus

DIRECTOR OF EDUCATION & ORS .....Respondents

Through: Mr. Anuj Aggarwal, Additional Standing Counsel, GNCTD with Mr. Siddhant Dutt, Advocate for R-1.
Ms. Indrani Ghosh, Advocate for R-2 to 10.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition has been preferred on behalf of Petitioner/St. George School (hereinafter referred to as 'School') under Article 226 of the Constitution of India, laying a challenge to a circular dated 15.10.2008 issued by Respondent No.1/Directorate of Education ('DoE'), directing the managements of all private recognised schools, aided and unaided, to implement the recommendations of 6th Central Pay Commission ('6th CPC') and pay the arrears in accordance with its earlier circular dated 22.09.2008, in terms of Section 10(1) of Delhi School Education Act and Rules, 1973 ('DSEAR'). Direction is sought to Respondents No.2 to 10, who are teachers of the School and had joined on various dates between 1998 and

2003 and left service on various dates between 2006 and 2008, to repay the alleged excess amounts paid to them towards bonus as per Office Memorandums issued on the subject by the Central Government.

2. Petitioner is an unaided minority school and Respondent Nos. 2 to 10 are the teachers who were employed in the School and this petition is predicated essentially on the rights of a minority institution to administer the School with maximum autonomy. Contention raised on behalf of the School is that the impugned circular, whereby School has been directed to revise and refix the salaries of the teachers after granting benefit of pay revision under the 6th CPC is illegal, inasmuch as Section 10(1) of DSEAR is inapplicable to the School, being an unaided minority institution. It is urged that the Supreme Court in the case of ***T.M.A. Pai Foundation and Others v. State of Karnataka and Others, (2002) 8 SCC 481*** impliedly overruled the judgment in ***Frank Anthony Public School Employees' Association v. Union of India and Others, (1986) 4 SCC 707***, where the Supreme Court had no occasion to differentiate between aided and unaided institutions, in the context of minority institutions. The argument is that in ***T.M.A. Pai Foundation (supra),*** the Supreme Court observed that maximum autonomy has to be given to unaided minority Schools with respect to administration and management including the right to appoint, admit students, charge fees as also fix the emoluments of the staff and DoE cannot regulate fixation of salaries and emoluments by directing implementation of 6th CPC, invoking 10(1) DSEAR.

3. It is further contended that even assuming that Section 10(1) DSEAR applies to the School, teachers cannot claim remuneration for the period between January, 2006 to August, 2008 since the recommendations of 6th

CPC were made applicable by the DoE to the Government Schools only from 15.10.2008 and more onerous conditions cannot be imposed on the private schools especially the unaided minority Schools.

4. With respect to bonus, which is allegedly paid to Respondents No.2 to 10 as per the averment in ground 'G' of the writ petition, it is urged that the excess payments must be refunded to the School as they are not entitled for bonus. Reliance by the Respondents on Office Memorandum dated 28.08.2009 issued by the Central Government, basis which the bonus was claimed, shows that bonus was admissible only to those employees who were in service on 31.03.2009, whereas Respondents No.2 to 10 had left the School between 2006 and 2008 and even otherwise, there is no express or implied provision under Section 10(1) which entitles the said Respondents to bonus.

5. Learned counsels for DoE and Respondent Nos. 2 to 10 *per contra* strenuously oppose the contentions of the School and seek dismissal of the petition. It is argued that it is no longer *res integra* that benefits of 6th CPC have to be given to the employees of the private recognised Schools, both aided and unaided, including unaided minority schools, by virtue of statutory mandate flowing from Section 10(1) of DSEAR, which provides that an employee of a recognised private School will be entitled to pay scales, allowances, medical services, pension, gratuity and all other permissible benefits at par with employees of corresponding status in the schools run by the Delhi Government and having implemented the same, no challenge can be laid by the School. To support the plea, reliance is placed on the judgment of the Supreme Court in ***Frank Anthony (supra)*** and of the Division Bench of this Court in ***Ahlcon Public School v. Omita Mago and***

Others, 2023 SCC OnLine Del 368 as well as of the Single Benches in ***Shikha Sharma v. Guru Harkrishan Public School and Others, 2021 SCC OnLine Del 5011*** and ***Kuttamparampath Sudha Nair v. Managing Committee Sri Sathya Sai Vidya Vihar and Another, 2021 SCC OnLine Del 2511***, followed in several cases later. To counter the argument of the School that an unaided minority Schools is not bound to implement the recommendations of 6th or 7th CPC, learned counsels submit that Section 10(1) does not draw a distinction between an unaided minority and other private recognised Schools and this Court has decided this issue in ***Kuttamparampath Sudha Nair (supra)*** and ***Shikha Sharma (supra),*** holding that Pay Commissions' recommendations are binding on unaided minority Schools and they will have to ensure that the salaries and emoluments of the teachers are at par with teachers of corresponding status in the schools run by Delhi Government and the private recognised aided and unaided non-minority schools.

6. Insofar as the payments of bonus is concerned, learned counsels submit that even this issue is settled as this Court in ***Meenu Sachdev v. Managing Committee Sri Sathya Sai Vidya Vihar and Anr.***, ***W.P.(C) 2353/2022***, decided on 14.12.2022, directing the School therein to revise the salaries and emoluments by granting benefits of pay revisions under 6th and 7th CPC including the dearness allowance and bonus etc. It is urged that the contention of the School that O.M. dated 28.08.2009 envisages payment of bonus only to those employees who were in service on 31.03.2009 is wholly misconceived. Selectively one O.M. cannot be used by the School to deny the benefit of bonus as these O.Ms. are issued every financial year and regulate the grant of bonus. The claim of the teachers for grant of Transport

Allowance is also justified and right to claim the said allowance, based on actuals, has been upheld by this Court in ***Shikha Sharma (supra)***. School is confusing the grant of Transport Allowance with Travelling Allowance and erroneously seeking exemption under Rule 125 of DSEAR, which is inapplicable to Transport Allowance.

7. *Albeit* it is not pleaded, at this stage, learned counsel for Respondents No.2 to 10 submits that the School be directed to refix and revise the salaries granting increments in accordance with the methodology stipulated under Central Civil Services (Revised Pay) Rules, 2008 ('2008 Rules'). The argument is that while calculating the revised pay on transition from 5th CPC to 6th CPC, School has taken the Basic Pay of 5th CPC as on 01.01.2006 and multiplied the same by a factor of 1.86 and added the Grade Pay, but without adding the increment due on the Basic Pay, as on 01.01.2006 and this has resulted in a monetary loss to Respondent Nos.2 to 10.

8. Heard counsels for the parties and examined their rival submissions.

9. At the outset, it may be noted that School has implemented 6th CPC recommendations and fixed the salaries and emoluments of the teachers including Respondent Nos.2 to 10 and the challenge to the impugned circular issued by DoE is only academic. The first legal contention of the School that being an unaided minority institution it is not bound to implement recommendations of the 6th CPC, as directed by the DoE by the impugned circular, only deserves to be rejected. In ***Kuttamparampath Sudha Nair (supra)*** and ***Shikha Sharma (Supra),*** this Court has held that every private recognised School be it aided or unaided including unaided minority is under an obligation to comply with the statutory mandate of Section 10(1) of DSEAR and the employees of these Schools are entitled to

be paid salaries and allowances, medical benefits, pension and other statutory benefits at par with the employees of corresponding status of the Schools run by the Delhi Government. Relevant paragraphs from the judgment in ***Kuttamparampath Sudha Nair (supra)*** are as follows:

> *"20. The issue of applicability of Section 10(1) and other provisions of Chapter IV of the DSEA&R to unaided minority schools came up for consideration before the Supreme Court in Frank Anthony (supra) and the Supreme Court set aside the pre-existing Section 12, which had excluded the application of Section 10(1) and other provisions to the unaided minority schools. The Supreme Court also considered whether applying Section 10(1) would have the impact of eroding the minority character of the schools which entitles them to a Constitutional protection under Article 30(1) and held that it did not. The Supreme Court had observed that excellence of every school, aided or unaided, would depend upon the quality of its teachers and therefore, provisions like Section 10(1) mandating payment of salary and allowances cannot be characterized as unreasonable even in respect unaided minority institutions.*
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> *21. The judgment was followed in several cases and was also relied upon by the eleven-Judge Bench of the Supreme Court in T.M.A. Pai (supra). Relevant paras of the judgment in Frank Anthony (supra) are as follows:—*
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> > *"20. Thus, Sections 8(1), 8(3), 8(4) and 8(5) do not encroach upon any right of minorities to administer their educational institutions. Section 8(2), however, must, in view of the authorities, be held to interfere with such right and, therefore, inapplicable to minority institutions. Section 9 is again innocuous since Section 14 which applies to unaided minority schools is virtually on the same lines as Section 9. We have already considered Section 11 while dealing with Section 8(3). We must, therefore, hold that Section 12 which makes the provisions of Chapter IV inapplicable to unaided minority schools is discriminatory not only because it makes Section 10 inapplicable to minority institutions, but also because it makes sections 8(1), 8(3), 8(4), 8(5), 9 and 11 inapplicable to unaided minority institutions. That the Parliament did not understand Sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article 30(1) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article 30(1) is the price which the aided minority institutions have to pay to obtain aid from the government."*
> >
> > *21. The result of our discussion is that Section 12 of the Delhi School*

Education Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void except to the extent that it makes Section 8(2) inapplicable to unaided minority institutions. We, therefore, grant a declaration to that effect and direct the Union of India and the Delhi Administration and its officers, to enforce the provisions of Chapter IV [except Section 8(2)] in the manner provided in the chapter in the case of the Frank Anthony Public School. The management of the school is directed not to give effect to the orders of suspension passed against the members of the staff.

23. 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 ring 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."

22. Relevant paras of the judgment in T.M.A. Pai (supra) are as follows:—

"124. In Lily Kurian v. Sr. Lewina [(1979) 2 SCC 124 : (1979) 1 SCR 820] this Court struck down the power of the Vice-Chancellor to veto the decision of the management to impose a penalty on a teacher. It was held that the power of the Vice-Chancellor, while hearing an appeal against the imposition of the penalty, was uncanalized and unguided. In Christian Medical College Hospital Employees' Union v. Christian Medical College Vellore Assn. (1987) 4 SCC 691 this Court upheld the application of industrial law to minority colleges, and it was held that providing a remedy against unfair dismissals would not infringe Article 30. In Gandhi Faiz-e-am College v. University of Agra

(1975) 2 SCC 283 a law which sought to regulate the working of minority institutions by providing that a broad-based management committee could be reconstituted by including therein the Principal and the seniormost teacher, was valid and not violative of the right under Article 30(1) of the Constitution. In All Saints High School v. Govt. of A.P. (1980) 2 SCC 478 a regulation providing that no teacher would be dismissed, removed or reduced in rank, or terminated otherwise except with the prior approval of the competent authority, was held to be invalid, as it sought to confer an unqualified power upon the competent authority. In Frank Anthony Public School Employees' Assn. v. Union of India (1986) 4 SCC 707 the regulation providing for prior approval for dismissal was held to be invalid, while the provision for an appeal against the order of dismissal by an employee to a tribunal was upheld. The regulation requiring prior approval before suspending an employee was held to be valid, but the provision, which exempted unaided minority schools from the regulation that equated the pay and other benefits of employees of recognized schools with those in schools run by the authority, was held to be invalid and violative of the equality clause. It was held by this Court that the regulations regarding pay and allowances for teachers and staff would not violate Article 30."

(emphasis supplied)

23. The issue again came up before the Supreme Court in Raj Soni v. Air Officer Incharge (Administration), (1990) 3 SCC 261 where the Supreme Court reiterated and re-affirmed the inflexible nature of the liability that was binding on a recognized school under the provisions of the DSEA&R and significant would it be to note that the Supreme Court categorically held that recognized private schools in Delhi, whether aided or otherwise, are governed by the provisions of DSEA&R. Relevant para of the judgment is as under:—

"11. The recognized private schools in Delhi whether aided or otherwise are governed by the provisions of the Act and the Rules. The respondent-management is under a statutory obligation to uniformly apply the provisions of the Act and the Rules to the teachers employed in the school. When an authority is required to act in a particular manner under a statute it has no option but to follow the statute. The authority cannot defy the statute on the pretext that it is neither a State nor an "authority" under Article 12 of the Constitution of India."

24. In P.M. Lalitha Lekha v. Lt. Governor in W.P. (C) No. 5435/2008 decided on 02.02.2011 although the question involved was counting of service of the Petitioner therein for computing her pension and in that context was different on facts, but the point of law was the same as the one

arising in the present petition. Co-ordinate Bench of this Court examined the provisions of Section 10(1) of the DSEA&R and observed that the first proviso to Section 10(1) clearly obliges the DOE to direct the management of all recognized private schools to bring all benefits, including inter-alia pensionary benefits, to the same level as that of the employees of corresponding status of the schools run by the Director of Education. The second proviso enables the DOE to withdraw the recognition of the school under Section 4 of the DSEA&R in case the management fails to comply with the directions and serves a salutary purpose and empowers the DOE to issue directions aimed at fulfilling the object of Section 10(1) of the DSEA&R. It was also held that the mandate of Section 10(1) is unambiguous, regardless of whether the school receives grant-in-aid or not. It was also held that it must be kept in mind that the Delhi School Education Act contemplates unaided private schools also, as they are also granted recognition and therefore the mandate of Section 10(1) would apply to them with full rigour. Relevant paras of the judgment are as under:—

> *"11. The first proviso to Section 10 of the Delhi School Education Act, 1973 clearly obliges the Director of Education to direct the management of all recognized private schools to rectify any deficiency and to bring all benefits, including, inter alia, pensionary benefits up to the same level as those of employees of corresponding status of the schools run by the Director of Education. The second proviso further provides that in case the management of the school fails to comply with such directions, recognition of the school can be withdrawn under the powers given in S.4 of the Delhi School Education Act, 1973. This serves a salutary purpose and further empowers the Director of Education to issue appropriate directions aimed at fulfilling the object of Section 10(1) of the Act.*
>
> *12. The school has been given certain privileges, including recognition, on condition, inter alia, that it complies with Section 10(1). Due to the non-compliance of the conditions by the respondent school the petitioner cannot be made to suffer. If the respondent school does not come forward to honor its employees' entitlement in this behalf, then, steps need to be taken by the appropriate authority to ensure compliance.*
>
> *13. The payment of pension for the period before the grant-inaid came into the picture has to be rendered by the school, but post such grant, the liability shifts to the respondent. This is because the mandate of Section 10(1) is unambiguous. Regardless of whether it receives grant-in-aid or not. So long as it is a recognized private school, pension and other benefits of its employees must be the same as those admissible to employees of the Authority's schools. Under the first*

proviso, it is the respondent's duty to ensure that such payment is made. Under the Second proviso the respondent can take action if those directions are not followed. The respondents in no circumstance can be absolved from their duty.

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15. In this context, it must be kept in mind that the Delhi School Education Act contemplates unaided private schools also. Even such schools are granted recognition. The mandate of Section 10(1) applies with full rigour to them also."

(emphasis supplied)

25. Recently, a Division Bench of this Court in Dhanwant Kaur Butalia v. Guru Nank Public School in LPA 499/2013 decided on 14.01.2016 reiterated and re-enforced that Section 10(1) with its consequential resultant mandate that scales of pay, allowances, medical facilities, gratuity, etc., paid to the Government schools should be paid to employees of corresponding status in private recognized schools, would apply to all unaided schools. Section 10(1) is a statutory purity and also a minimum standard which all recognized schools have to adhere to.

26. In the appeal before the Division Bench, the Appellant was aggrieved by an order of the learned Single Judge whereby her claim for increase of salary, consequent to implementation of 6th CPC recommendation, was rejected. The Appellant invoked provisions of Section 10(1) of DSEA&R and also relied on earlier judgments of this Court wherein it was consistently ruled that unaided schools have an obligation to ensure that emoluments of teachers and other employees are at par with those in the schools established and maintained by the appropriate Government. Judgments of this Court in Gurvinder Singh Saini v. Guru Harkishan Public School in W.P. (C) 12372/2009 decided on 02.09.2011, Deepika Jain v. Rukmini Devi Public School in W.P.(C) 237/2013 decided on 23.09.2013 and the judgment of Division Bench in Guru Harkishan Public School v. Gurvinder Singh Saini in LPA 58/2012 decided on 05.09.2012, were cited by the Appellant and taken note of by the Division Bench.

27. As the issue before the Division Bench concerned benefits under 6th CPC, reliance was placed on the CCS (Revised Pay) Rules, 2008 and Office Memorandum dated 30.08.2008 referring to the said Rules. Based on this, a Circular was issued by the Competent Authority under the DOE on 15.10.2008, directing the managements of all private recognized (aided as well as unaided) schools to implement 6th CPC recommendations. After a conjoint reading of the circulars and the Pay Rules, the Division Bench held as follows:—

"6. The Court also notices that the pre-existing Section 12 which had excluded the application of Section 10 and other provisions of the Chapter, to unaided minority schools was set aside by the Supreme Court in Frank Anthony School Employees Association v. Union of India (1986) 4 SCC 707 : AIR 1987 SC 311. The Supreme Court expressly considered the impact of Section 10 and whether it had the effect of eroding the minority character of schools entitled to protection under Article 30 and concluded that it did not. The said judgment has been constantly followed and it was not overruled but was approved in TMA Pai Foundation's case (supra). Section 10 with its consequential resultant mandate is that scales of pay, allowances, medical facilities, gratuity, provident fund "and other prescribed benefits" which employees of "corresponding status" in schools of the appropriate government are to be granted to employees of all unaided schools.

7. This ipso facto ought to clinch the case in favour of the present appellant. Section 10 is a statutory purity and also a minimum standard which all recognized schools have to adhere to.

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10. The said office memorandum of 30.08.2008 also referred to the Central Civil Service Revised Pay Rules, 2008. The effect of all these office memoranda (dated 11.09.2008, 22.09.2008 and 15.10.2008) is that the managements of all private recognized schools aided as well as unaided had to implement the 6PC Recommendations, in the manner stipulated by Section 10 of Delhi Education Act. Circular dated 15.10.2008 was categorical in this regard. It reads as under:

> *"Section 10(1) of Delhi School Education Act 1973 provides that:*
>
> > *"The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized private school shall not be less than those of the employees of the corresponding status in school run by the appropriate authority."*
>
> *Therefore, the Management of all private recognized, (Aided as well as unaided) schools are directed 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 r/o employees of Government Schools.*
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> *This issue with prior approval of competent Authority."*

11. A co-joint reading of all circulars would immediately reveal that the 6PC recommendations were accepted and the Central Government

formulated the revised pay rules with effect from 01.01.2006. The rules were published in 2008. Nevertheless, the entitlement following from it accrued to all with effect from 01.01.2006. The only exception was that certain types of allowances i.e. HRA, children's education allowance, special compensatory allowance etc. were to be paid prospectively with effect from 01.09.2008 (refer para 3 of OM dated 30.08.2008). In all other respects, the pay parity mandated for government of NCT teachers was to apply to teachers and staff members of unaided schools - minority and non-minority schools.

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13. In the present case, Section 10 remains on the statute book; it was declared to be applicable to all unaided schools including minority schools, from 1986 onwards i.e. with the declaration of the law in Frank Anthony School Employees Association's case (supra). There is no dispute that the 6PC recommendations were to be implemented from the date the Government of NCT implemented it. Such being the case, the respondent school in the present case could not have claimed ignorance of application of Section 10 and stated that it was obliged to pay arrears or implement the 6PC recommendations with effect from the date later than that applicable in the case of Government of NCT teachers and teaching staff in its schools.

14. As a consequence and in the light of the previous order of this court in Gurvinder Singh Saini's case (supra) and Uma Walia's case (supra) the impugned order and judgment of learned Single Judge is hereby set aside. The respondent is directed to disburse all the arrears of salary and allowances payable pursuant to 6PC recommendations - to the appellant except those expressly denied by virtue of the Central Government's Office Memorandum dated 30.08.2008, within six weeks from today."

28. Contention of learned counsel for the School that Section 10(1) does not specifically include unaided private schools may seem attractive at the first blush, if one was to superficially look at the provisions of the Section, where the words used are 'recognized private school'. However, the contention cannot be accepted in view of the various judicial pronouncements where the provision of Section 10(1) has been interpreted to include both aided and unaided schools. The Division Bench in Dhanwant Kaur (supra) has clearly held that the mandate of Section 10(1) would apply to all unaided schools as the minimum standard that the provision ensures must be adhered to by all recognized schools.

29. In Dev Dutt Sharma v. Managing Society National Public School in W.P. (C) 11563/2009 decided on 02.07.2010, a Co-ordinate Bench of this Court pronounced that the mandate of Section 10(1) is unambiguous,

regardless of whether the institution receives grant-in-aid or not. Since the Act itself contemplates unaided private schools for recognition, mandate will apply with full rigour to them. The Supreme Court in Frank Anthony (supra) held that impact of Section 10(1) would not have the effect of eroding the minority character of the Minority Institutions, who are entitled to protection under Article 30(1) of the Constitution of India.

30. Additionally, it may be noted that this is also the understanding of the DOE which is implicit in the various Circulars issued by them from time to time in this regard. Vide order dated 19.08.2016, DOE, in exercise of powers conferred under Sections 17(3), 24(3) and 18 of the Delhi School Education Act, 1973 read with Rules 50, 177 and 180 of the Delhi School Education Rules, 1973 adopted the CCS (Revised Pay) Rules, 2016, under which benefits of 7th Pay Commission are paid to the Government employees. Directions were accordingly issued by the DOE, vide Circular dated 17.10.2017 to all the unaided private recognized schools to extend the benefits of 7th CPC to its employees in accordance with Section 10(1) at par with the Government employees. By another order dated 09.10.2019, the DOE reiterated its directions to the unaided schools to comply with the mandate of Section 10(1), failing which necessary action shall be taken as per provisions of DSEA&R against the defaulting Schools. Relevant paras of the order dated 17.10.2017 are as under:—

> *"In continuation of this Directorate's Order No. DE.15(318)/PSB/2016/18117 dated 25/08/2017 and In exercise of the powers conferred under action 17(3) and section 24(3), of the Delhi School Education Act, 1973 read with sub sections 3, 4 and 5 of Section 18 of the Delhi School Education Act, 1973 and with rules 50, 177 and 180 of the Delhi School Education Rules, 1973 and in continuation of the previous ordersNo.DE. 15/Act/Duggal. Com/203/99/23039-23988 dated 15.12.1999, F.DE 15/Act/2K/243/KKK/883-1982 dated 10.02.2005, E.15/Act/2006/738-798 dated 02.02.2006, relevant paras of F.DE/15 (56)/Act/2009/778 dated 11.02.2009, F.DE-15/ACT-I/WPC-4109/13/6750 dated 19.02.2016, F.DE-15/ACT-I/WPC-4109/PART/13/7905-7913 dated 16.04.2016 & F.DE/PSB/2017/16604 dated 03/07/2017, I, Saumya Gupta, Director of Education, hereby issue following directions to all the Unaided Private Recognized Schools in the National Capital Territory of Delhi for the implementation of 7th Central Pay Commission's Recommendations under Central Civil Services (Revised Pay) Rules, 2016 with effect from 01.01.2016.*
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> *xxx xxx xxx*

33. The Court notes that the DOE has consistently taken a stand that the private recognized unaided schools are bound to comply with

provisions of Section 10(1) and this is discernible from Circular dated 15.10.2008 issued by the DOE after the CCS (Revised Pay) Rules, 2008 were notified, pursuant to 6th CPC. The Circular was taken note of by the Division Bench in Dhanwant Kaur (supra) and is extracted in the earlier part of the judgement. This obviates any doubt that provisions of Section 10(1) of the DSEA&R shall apply to the Respondent/School and it is under a statutory obligation to pay the revised salaries and emoluments under 7th CPC to the Petitioners, in accordance with the various DOE circulars and orders referred and alluded to above.

10. In ***Shikha Sharma (supra)***, Co-ordinate Bench of this Court held as follows:

"26. So, it is clear 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. There is no dispute that the benefits of 6th and 7th CPC have been given to the employees of the Government run Schools. If that be so, the employees of the unaided minority Schools are also entitled to get the benefits of the recommendations as made by the 6th and 7th CPC reports. So, this plea of Mr. Abinash Kumar Mishra is liable to be rejected. The plea of Mr. Mishra, that till such time the DoE grants approval to the Schools to collect the arrears of fees, the Schools must not be directed to pay the benefits of 7th CPC is concerned, the same is unmerited. The employees are entitled to equal pay and other benefits, by operation of Section 10 of the DSE Act, in other words, by operation of law, the said benefits are payable. The same does not pre-suppose the approval being granted by the Director to the Schools to claim higher fee or arrears thereof."

11. Therefore, it is more than well settled that Section 10(1) recognises no difference between private aided, unaided and unaided minority Schools. This issue again came up for consideration before this Court in ***Anjali Vaid and Others v. Adarsh World School and Others, 2023 SCC OnLine Del 7423,*** where the argument of the school was predicated on the judgement of the Supreme Court in ***T.M.A. Pai Foundation (supra)*** and the Court held as follows:

*"**C) Whether it is mandatory for the unaided minority School to implement the recommendations of 6th and 7th CPC?***

150. *The unaided minority schools have been defined in Section 2(x) of DSE as per which the schools which are usually governed by a minority community and does not receive any aid. The aforesaid provision has been reproduced herein below as follows:*

> *"unaided minority school" means a recognized minority school which does not receive any aid.*

151. *The case of the respondent unaided minority schools is that the said schools are not governed by the Section 10 of the DSE. Moreover, they have the fundamental right which gives them autonomy to function and manage their own affairs. Therefore, an objection was raised that the school has an authority to determine the salaries and emoluments payable to its staff and the same falls within the ambit of the administration of the minority unaided educational institute.*

152. *To buttress their contention, the respondents has referred to the following Articles from the Constitution of India, which have been reproduced herein below:*

> *"Article 26*
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> ***26. Freedom to manage religious affairs*** *- Subject to public order, morality and health, every religious denomination or any section thereof shall have the right*
>
> *(a) to establish and maintain institutions for religious and charitable purposes;*
>
> *(b) to manage its own affairs in matters of religion;*
>
> *(c) to own and acquire movable and immovable property; and*
>
> *(d) to administer such property in accordance with law.*
>
> *Article 30*
>
> ***30. Right of minorities to establish and administer educational institutions-***
>
> *(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.*
>
> *(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.*
>
> *(2) The state shall not, in granting aid to educational institutions,*

discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language."

153. *It is contended by the respondent minority unaided school that under Article 26 and Article 30 of the Constitution of India guarantees that the school have the right to establish and administer their own school for the purpose of preservation of their language, religion, script or culture. Moreover, the Constitution guarantees the minority protection to ensure that there is preservation, and that it strengthens the integrity and unity of the nation.*

154. *Furthermore, the respondent school have referred to the following provision of the Delhi School Education Act, 1973, which is as follows:*

"3. Power of Administrator to regulate education in schools.—

(1) The Administrator may regulate education in all the schools in Delhi in accordance with the provisions of this Act and the rules made thereunder.

(2) The Administrator may establish and maintain any school in Delhi or may permit any person or local authority to establish and maintain any school in Delhi, subject to compliance with the provisions of this Act and the rules made thereunder.

(3) On and from the commencement of this Act and subject to the provisions of clause (1) of article 30 of the Constitution, the establishment of a new school or the opening of a higher class or the closing down of an existing class in any existing school in Delhi shall be subject to the provisions of this Act and the rules made thereunder and any school or higher class established or opened otherwise than in accordance with the provisions of this Act shall not be recognised by the appropriate authority."

155. *The respondent has further contended that as per Section 3 of DSE, the respondent has been given right to establish and maintain the school as well as regulate the education in that school. Moreover, the aforesaid section is subjected to Article 30 of the Constitution of India for the purpose of the administration of the school. Hence, the minority respondent school have the autonomy in the administration of their school.*

156. *Section 10 of DSE is not applicable to the unaided minority school, since these schools have right to administer the salary and the emoluments payable to the staff of the school.*

157. *Before adjudicating upon the question of law, this Court will first discuss the law laid down by the Hon'ble Supreme Court and this Court pertaining to whether unaided minority schools are bound to implement Section 10 of DSE as well as recommendations of the Pay Commission.*

158. *In the judgment of Frank Anthony Public School Employees' Association (Supra), the Hon'ble Supreme Court that Section 10 of the DSE is applicable to the unaided minority Schools. The relevant paragraphs of the judgment are reproduced as under:*

> *"20. Thus, Sections 8(1), 8(3), 8(4) and 8(5) do not encroach upon any right of minorities to administer their educational institutions. Section 8(2), however, must, in view of the authorities, be held to interfere with such right and, therefore, inapplicable to minority institutions. Section 9 is again innocuous since Section 14 which applies to unaided minority schools is virtually on the same lines as Section 9. We have already considered Section 11 while dealing with Section 8(3). We must, therefore, hold that Section 12 which makes the provisions of Chapter IV inapplicable to unaided minority schools is discriminatory not only because it makes Section 10 inapplicable to minority institutions, but also because it makes Sections 8(1), 8(3), 8(4), 8(5), 9 and 11 inapplicable to unaided minority institutions. That the Parliament did not understand Sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article 30(1) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article 30(1) is the price which the aided minority institutions have to pay to obtain aid from the Government.*
>
> *21. The result of our discussion is that Section 12 of the Delhi School Education Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void except to the extent that it makes Section 8(2) inapplicable to unaided minority institutions. We, therefore, grant a declaration to that effect and direct the Union of India and the Delhi Administration and its officers, to enforce the provisions of Chapter IV [except Section 8(2)] in the manner provided in the chapter in the case of the Frank Anthony Public School. The management of the school is directed not to give effect to the orders of suspension passed against the members of the staff.*
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> *22. After the arguments of both sides were fully heard, Shri. Sushil Kumar who appeared for the institution along with Mr. Anthony submitted that according to the instructions of the Council for the Indian School Certificate Examination, "the staff must be paid salaries and allowances not lower than those paid in comparable Government schools in the State in which the school is located" and in view of this instruction it was not necessary for us to go into the question of the applicability of Section 10 to minority institutions. We do not attach any significance to this last minute, desperate submission. It is not clear whether the instruction is a condition*

imposed by the Council pursuant to Section 19 of the Delhi School Education Act. There is no way by which the staff can seek to enforce the instruction. Nor is the instruction of any relevance since it is not the case of the respondents that the institution is paying or is agreeable to pay the scales of pay stipulated in the instruction.

23. 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 ring 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."

159. *The Hon'ble Supreme Court held that Section 12 of the DSE is discriminatory and as such bad in law. Hence, Sections 8 to 11 of the DSE (except Section 8(2) of the DSE) is applicable to the minority Schools. Section 10 of the DSE, therefore, is applicable on unaided minority schools and therefore, the said schools have to pay their staff in accordance with the recommendations of the Pay Commissions.*

160. *The Hon'ble Supreme Court in T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481, held that the right to administer an educational institution has to be regulated and these schools can be bound by certain regulatory measures as prescribed by governing body to ensure the maintenance of administrative policies. The relevant paragraphs of the judgment are reproduced herein below:*

"50. The right to establish and administer broadly comprises the following rights:

(a) to admit students;

(b) to set up a reasonable fee structure;

(c) to constitute a governing body;

(d) to appoint staff (teaching and non-teaching); and

(e) to take action if there is dereliction of duty on the part of any employees.

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53. With regard to the core components of the rights under Articles 19 and 26(a), it must be held that while the State has the right to prescribe qualifications necessary for admission, private unaided colleges have the right to admit students of their choice, subject to an objective and rational procedure of selection and the compliance with conditions, if any, requiring admission of a small percentage of students belonging to weaker sections of the society by granting them freeships or scholarships, if not granted by the Government. Furthermore, in setting up a reasonable fee structure, the element of profiteering is not as yet accepted in Indian conditions. The fee structure must take into consideration the need to generate funds to be utilized for the betterment and growth of the educational institution, the betterment of education in that institution and to provide facilities necessary for the benefit of the students. In any event, a private institution will have the right to constitute its own governing body, for which qualifications may be prescribed by the State or the university concerned. It will, however, be objectionable if the State retains the power to nominate specific individuals on governing bodies. Nomination by the State, which could be on a political basis, will be an inhibiting factor for private enterprise to embark upon the occupation of establishing and administering educational institutions. For the same reasons, nomination of teachers either directly by the department or through a service commission will be an unreasonable inroad and an unreasonable restriction on the autonomy of the private unaided educational institution.

54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions.

55. The Constitution recognizes the right of the individual or religious denomination, or a religious or linguistic minority to establish an educational institution. If aid or financial assistance is not sought,

then such institution will be a private unaided institution. Although, in Unni Krishnan case [(1993) 1 SCC 645] the Court emphasized the important role played by private unaided institutions and the need for private funding, in the scheme that was framed, restrictions were placed on some of the important ingredients relating to the functioning of an educational institution. There can be no doubt that in seeking affiliation or recognition, the Board or the university or the affiliating or recognizing authority can lay down conditions consistent with the requirement to ensure the excellence of education. It can, for instance, indicate the quality of the teachers by prescribing the minimum qualifications that they must possess, and the courses of study and curricula. It can, for the same reasons, also stipulate the existence of infrastructure sufficient for its growth, as a prerequisite. But the essence of a private educational institution is the autonomy that the institution must have in its management and administration. There, necessarily, has to be a difference in the administration of private unaided institutions and the government-aided institutions. Whereas in the latter case, the Government will have greater say in the administration, including admissions and fixing of fees, in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions. Bureaucratic or governmental interference in the administration of such an institution will undermine its independence. While an educational institution is not a business, in order to examine the degree of independence that can be given to a recognized educational institution, like any private entity that does not seek aid or assistance from the Government, and that exists by virtue of the funds generated by it, including its loans or borrowings, it is important to note that the essential ingredients of the management of the private institution include the recruiting students and staff, and the quantum of fee that is to be charged.

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63. It was submitted that for maintaining the excellence of education, it was important that the teaching faculty and the members of the staff of any educational institution performed their duties in the manner in which it is required to be done, according to the rules or instructions. There have been cases of misconduct having been committed by the teachers and other members of the staff. The grievance of the institution is that whenever disciplinary action is sought to be taken in relation to such misconduct, the rules that are normally framed by the Government or the university are clearly loaded against the management. It was submitted that in some cases, the rules require the prior permission of the governmental authorities before the initiation of the disciplinary proceeding, while in other cases,

subsequent permission is required before the imposition of penalties in the case of proven misconduct. While emphasizing the need for an independent authority to adjudicate upon the grievance of the employee or the management in the event of some punishment being imposed, it was submitted that there should be no role for the Government or the university to play in relation to the imposition of any penalty on the employee.

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66. In the case of private unaided educational institutions, the authority granting recognition or affiliation can certainly lay down conditions for the grant of recognition or affiliation; these conditions must pertain broadly to academic and educational matters and welfare of students and teachers - but how the private unaided institutions are to run is a matter of administration to be taken care of by the management of those institutions.

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139. Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g. method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the conditions of recognition, which cannot be such as to whittle down the right under Article 30."

161. *This Court has time and again reiterated that Section 10 of the DSE is applicable on the unaided recognized schools too. The Courts aim at ensuring that there should be a balance between the autonomy given to the schools for the purpose of the establishment of the educational institution and on the other hand, regulation by the authority to ensure that there is adequate quality of education maintained in the school by making the unaided minority schools bound by certain regulations.*

162. *This Court in the case of Guru Harkishan Public School v. Director of Education, (2015) 221 DLT 448, passed a judgment on the similar lines to the judgment of the Hon'ble Supreme Court in Frank Anthony Public School Employees' Association (Supra) and held as follows:*

"35. The court further held that 'mere prescription of scales of pay and other conditions of service would not jeopardise the right of the management of minority institutions to appoint teachers of their choice. The excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff, and in turn, that would depend on the quality and the contentment of the teachers. Conditions of service pertaining to minimum qualifications

of teachers, their salaries, allowances and other conditions of service which ensure security, contentment and decent living standards to teachers and which will consequently enable them to render better service to the institution and the pupils cannot surely be said to be violative of the fundamental right guaranteed by Article 30(1) of the Constitution. The management of a minority Educational institution cannot be permitted under the guise of the fundamental right guaranteed by Article 30(1) of the Constitution, to oppress or exploit its employees any more than any other private employee. Oppression or exploitation of the teaching staff of an educational institution is bound to lead, inevitably, to discontent and deterioration of the standard of instruction imparted in the institution affecting adversely the object of making the institution an effective vehicle of education for the minority community or other persons who resort to it. The management of minority institution cannot complain of invasion of the fundamental right to administer the institution when it denies the members of its staff the opportunity to achieve the very object of Article 30(1) which is to make the institution an effective vehicle of education'.

36. Thus, Section 8(1), 8(3), 8(4) and 8(5) were held not to encroach upon any right of the minorities to administer their educational institutions. However, Section 8(2) was held to be not applicable to minority institutions.

37. The Court finally held that 'Section 12 which makes the provisions of Chapter IV inapplicable to unaided minority schools is discriminatory not only because it makes Section 10 inapplicable to minority institutions, but also because it makes Sections 8(1), 8(3), 8(4), 8(5), 9 and 11 inapplicable to unaided minority institutions. That the Parliament did not understand Sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article 30(1) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article 30(1) is the price which the aided minority institutions have to pay to obtain aid from the Government'.

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the right under Article 30(1) is the price which the aided minority institutions."

163. *It is also imperative to refer to the judgment passed by the Coordinate Bench of this Court in the matter of Shikha Sharma (Supra), wherein this Court has dealt and summarized the position of implementation of recommendations of the Pay Commission by the unaided minority school and the relevant paragraphs of the same are as follows:*

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

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26. So, it is clear 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. There is no dispute that the benefits of 6th and 7th CPC have been given to the employees of the Government run Schools. If that be so, the employees of the unaided minority Schools are also entitled to get the benefits of the recommendations as made by the 6th and 7th CPC reports. So, this plea of Mr. Abinash Kumar Mishra is liable to be rejected. The plea of Mr. Mishra, that till such time the DoE grants approval to the Schools to collect the arrears of fees, the Schools must not be directed to pay the benefits of 7th CPC is concerned, the same is unmerited. The employees are entitled to equal pay and other benefits, by operation of Section 10 of the DSE Act, in other words, by operation of law, the said benefits are payable. The same does not pre-suppose the approval being granted by the Director to the Schools to claim higher fee or arrears thereof."

164. *The Coordinate Bench of this Court while summarizing, the issue pertaining to application of Section 10 of DSE held that the unaided minority schools are bound by Section 10 and shall ensure that the salary as well as the emoluments paid to the staff of the unaided private school shall at be par to the salary and emoluments paid to the staff of aided school at the same position.*

165. *This Court has further passed the judgment on similar lines in the matter of Kuttamparampath Sudha Nair (Supra)……*

166. *In view of the aforesaid judgments, the law with regard to unaided minority schools is settled and the said schools fall under the ambit of Section 10 of DSE. Hence, they are liable to follow the recommendations of the pay commissions and accordingly, pay the staff of their school at par with the employees of the government aided schools.*

167. *Education is an invincible weapon for empowering the next*

> *generation of the nation and the nation by of regulation authority has to exercise certain control to ensure that there is uniform quality of education is provided to every student of the country. The aspect of autonomy in administration of unaided or aided school therefore, does not come into play since the state has to ensure that there is quality education provided to the children. Hence, the unaided minority schools are bound by certain regulations of the appropriate authority."*

12. In view of the judgments aforementioned, challenge to the impugned circular cannot be sustained and the School is bound to revise the salaries and emoluments as per the 6th CPC recommendations and has done so rightly. The claim of the School that Respondents No.2 to 10 are not entitled to bonus is misplaced. This Court in ***Meenu Sachdev (supra)*** had granted the benefits of bonus to the Petitioners along with arrears of 6th and 7th CPC. The judgment was carried in appeal by the School in LPA 488/2023 and was being heard along with other appeals. On 01.06.2023, counsel for the Appellant therein undertook to implement the judgment with some breather to clear the dues. Taking this assurance on record, the appeal was disposed of. Even earlier this Court in ***Kailash Chand v. Goodley Public School and Ors., W.P.(C) 11906/2021***, decided on 05.04.2022, granted the benefit of bonus to the Petitioner therein. The same view has been taken in the case of ***Anjali Vaid (supra).*** Therefore, it is held that Respondents No.2 to 10 are entitled to bonus since Section 10(1) of DSEAR does not exclude the benefit of bonus from all other dues payable to the employees such as salaries, allowances etc. As far as the Transport Allowance is concerned, the same is also payable to Respondents No.2 to 10 as this issue is also no longer open to debate in view of the judgment in ***Shikha Sharma (supra),*** *albeit* payments have to be worked out by the School depending on the actuals.

13. Coming to the last plank of the arguments with respect to increments, Respondents No.2 to 10 canvassed that their salaries have been revised and re-fixed granting benefit of 6th CPC under 2008 Rules but there is a discrepancy with respect to grant of increment as on 01.01.2006. Both sides have their respective stands on this issue. Under 2008 Rules, fixation of initial pay in the revised pay structure is under Rule 7, which provides that the pay in the pay band/pay scale will be determined by multiplying the existing basic pay as on 01.01.2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10 and if the minimum of the revised pay band/pay scale is more than the amount arrived at, the pay shall be fixed at the minimum of the revised pay band/pay scale. Rule 10 provides that there will be a uniform date of annual increment viz. 1st July of every year and employees completing 6 months and above in the revised pay structure as on 1st July will be eligible to be granted the increment. The first increment after fixation of pay on 01.01.2006 in the revised pay structure was to be granted on 01.07.2006 to those employees for whom the date of next increment was between 01.07.2006 to 01.01.2007. However, representations were made on this issue to the Central Government by several stakeholders requesting that those employees who were due to get their annual increments between February to June of 2006, may be granted one increment on 01.01.2006 in the pre-revised scale. This issue was considered and it was decided to relax Rule 10 and an O.M. was issued by Department of Expenditure, Ministry of Finance, Government of India on 19.03.2012, whereby it was decided that those employees who were due to get their annual increment between February to June during 2006, may be granted one increment on 01.01.2006 in the pre-revised pay scale as a one-time

measure and thereafter the next increment will be granted in the revised pay structure on 01.07.2006 as per Rule 10 of 2008 Rules and pay of the employees was to be refixed accordingly. There is no dispute that the 2008 Rules are applicable to the Schools under the DoE and therefore, the pay fixation of Respondents No.2 to 10 will have to be done in consonance with Rule 10 of 2008 Rules read with O.M. dated 19.03.2012. Since this is a matter of refixation and calculations, it is best left at this stage to be carried out by the School after inviting the calculations from Respondents No.2 to 10 and giving them an opportunity of hearing to present their case.

14. Accordingly, this writ petition is dismissed holding that the impugned circular dated 15.10.2008, issued by DoE is legally valid and no ground has been made out by the School warranting interference. Respondents No.2 to 10 are held entitled to bonus for the relevant period as well as Transport Allowance. Calculations for payment of Transport Allowance will be worked out by the School in terms of judgment in ***Shikha Sharma (supra)***. School shall carry out the exercise of refixing the pay and allowances of the private Respondents in accordance with 2008 Rules and O.M. dated 19.03.2012 with respect to increments. The entire exercise of refixation and disbursements of payments shall be completed within three months from date of receipt of copy of this judgment.

15. Pending application also stands disposed of.

JYOTI SINGH, J

AUGUST 14, 2024/kks/𝒟𝒰