

**(2013) 09 DEL CK 0351**

**In the Delhi High Court**

**Case No :** Writ Petition (C) No. 17195 of 2004

Joice Johnson

APPELLANT

Vs

Director, Directorate of Edu. and Another

RESPONDENT

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**Date of Decision :** 10-09-2013

**Acts Referred:**

**Citation :** (2013) 09 DEL CK 0351

**Hon'ble Judges :** Valmiki J Mehta, J

**Bench :** Single Bench

**Advocate :** Manoj v. George and Mr. K. Girees Kumar, for the Appellant; A.P. Mukundan, for R-2, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Valmiki J Mehta, J.—Counsel for the petitioner says that the only relief which the petitioner presses is for payment of monetary emoluments in terms of the 5th Pay Commission Report and also consequential increase of terminal benefits to the petitioner who retired from the respondent no. 2-school on 29.2.2004. Counsel for respondent no. 2-school rightly does not dispute that the 5th Pay Commission Report becomes applicable to all the schools in Delhi and schools have to pay its employees the payment in terms of the 5th Pay Commission Report.

2. The only defence urged on behalf of the respondent no. 2-school is that school does not have capacity to pay and therefore there should be deferred implementation of the 5th Pay Commission Report. I have had an occasion to consider this aspect in the case of Meenu Thakur Vs. Somerville School in WP(C) No. 8748/2010 decided on 13.2.2013 wherein I have held that lack of financial capacity is not a ground not to implement the Pay Commission Report with respect to schools. The observation was made with respect to implementation of the 6th Pay Commission Report to the schools. A Division Bench of this Court in LPA No. 286/2010 titled as Rukmani Devi Jaipuria Public School Vs. Sadhna Payal & Ors. decided on 11.5.2012 has held that lack of financial capacity is not a

ground to refuse the pay benefits as per the Pay Commission Report.

3. Learned counsel for the petitioner has also rightly relied upon a judgment of a learned Single Judge of this Court in the case of Mrs. Veena Sharma and Others Vs. The Manager, No. 1 Air Force School and Others, wherein in para -20 the argument of paucity of funds for nonpayment of monetary dues of employees of the school was rejected.

4. In view of the above, the writ petition is allowed and respondent no. 2-school is directed to make payments of all monetary emoluments including salary, terminal benefits and other consequential dues which would become payable to the petitioner on the respondent no. 2 having to implement the 5th Pay Commission Report.

5. Since there will be required calculations to be done, and which can better be done by the nominee of the Director of Education, while allowing this writ petition, I direct the parties to appear before the nominee of the Director of Education who will calculate the dues payable to the petitioner on the petitioner being granted all monetary benefits on account of implementation of the 5th Pay Commission Report, consequential pay increases if any and consequential enhanced terminal benefits payable on the petitioner superannuating from the respondent no. 2-school on 29.2.2004. Let a copy of this order be given to the Director of Education, who shall appoint his nominee to determine the amounts which would be payable to the petitioner in terms of this order. The necessary calculations be done by the nominee of the Director of Education within a period of two months of receiving of the copy of the present judgment. On the calculations of the amounts payable to the petitioner by the respondent no. 2-school being given to the respondent no. 2-school by the nominee of the Director of Education, then such dues would become payable to the petitioner alongwith interest at 6% per annum simple from the date from which such amounts become due and payable and till the amounts are actually paid to the petitioner. Both the parties can file their calculations supported by the relevant documents. The nominee of the Director of Education will give personal hearing to the parties and thereafter pass a speaking order. The writ petition is allowed and disposed of with the aforesaid directions, leaving the parties to bear their own costs.