HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 10843 of 2021

Smt. Meenu

.....Petitioner(s)

Versus

State Of U.P. And 4 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Namman Raj Vanshi, Pramod Kumar Jain (Senior Adv.)
Counsel for Respondent(s)	:	C.S.C.

A.F.R.

Court No. - 6

HON'BLE SIDDHARTH NANDAN, J.

1. Heard Shri Namman Rajvanshi, Advocate, appearing on behalf of the petitioner and learned Standing Counsel for the State respondents.

2. By way of the present writ petition, the following prayer has been made:

> "(I) Issue a writ, order or direction in the nature of Mandamus commanding the respondents to release the amount gratuity legally due and payable to the petitioner along with interest @ 18% per annum from the date of accrual till the date of actual realisation;
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> (II) Issue a writ, order or direction in the nature of Mandamus commanding the respondents to release the amount of unpaid interest on the General provident Fund of the Petitioner from 01.09.2019 till 31.01.2020;
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> (III) Issue and other writ, order or direction as this Hon'ble court may deem fit and proper under the facts and circumstances of the case.
>
> (IV) Award the cost of the petition to be paid to the petitioner."

3. Learned counsel for the petitioner has submitted that petitioner was appointed as a Teacher in the Institution of respondent no. 4, which is a State aided educational institution and has been working continuously in the school, until the time she opted for Voluntary Retirement Scheme; and availed voluntary retirement with effect from 31st August, 2019.

4. Learned counsel for the petitioner further submits though the respondent no. 4, *vide* pension order dated 07.08.2020, had sanctioned the pension to the tune of Rs. 37,150/- per month, which is being duly paid to the petitioner; but the retirement 'gratuity' has not been paid to the petitioner.

5. Learned counsel for the petitioner further submits that Respondent no. 3 has released the GPF of the petitioner, to which she was duly entitled; but in spite of the fact that the petitioner, who was 55 years of age on the date of retirement (date of birth 26th June, 1964), yet she has been illegally denied the benefit of 'gratuity', which was otherwise legally admissible to her.

6. Learned counsel for the petitioner has also relied upon Fundamental Rule 56(e) of the Financial Handbook, wherein it has been provided that in case a government servant retires from service, he/she shall be entitled for payment of pension and other retirement benefits; and thus has submitted before this Court that once petitioner has been permitted to retire from service, she cannot be deprived of her right to receive amount of gratuity. For ready reference Rule 56(e) of the Financial Handbook, is reproduced below:

> "A retiring pension shall be payable and other retirement benefits, if any, shall be available in accordance with and subject to the provisions of the relevant rules to every Government servant who retires or is required or allowed to retire under this rule. "
>
>> [Provided that where a Government servant who voluntarily retires or is allowed voluntarily to retire under this rule the appointing authority may allow him, for the purposes of pension and gratuity, if any, the benefit of additional service of five years or of such period as he would have served if he had continued till the ordinary date of his superannuation, whichever be less];”

7. Learned counsel for the petitioner has also relied upon a Government Order dated 31.07.2001, whereby it has been clarified that if a government servant is permitted voluntary retirement from service, under Fundamental Rule 56 sub-Clause (c) of the Financial Handbook, he/she shall be entitled to pension and other retirement dues including 'gratuity' admissible under the Rules.

8. On a pointed query to the learned Standing Counsel, regarding the legal position, since the facts are admitted and undisputed, he submits that the controversy has since been settled by the judgment and order dated 07.11.2019, rendered in Writ- A No. 17399 of 2019 (Usha Rani v. State of U.P. and others), and accordingly he does not propose to file a counter affidavit and the matter may be decided at the admission stage itself, in view of the aforesaid judgment.

9. In order to determine the lis, this Court proceeds to examine the legal position which is being followed consistently till date. The Hon'ble Apex Court while reiterating the established position of law, regarding the pension and the gratuity, held in the case of **State of Kerala vs. M. Padmanabhan Nair reported in (1985) 1 SCC 429** that, the pension and gratuity are not bounty to be distributed by the Government to its employees, but have been elevated as valuable rights of the superannuating employees. Emphasizing the need for prompt payment of retiral dues to a government servant upon his retirement and assessing the reasons for the delay in payment of retiral dues, the consequential directions for payment of interest for the delay caused, was issued. The Apex Court held as follows:

> "1. Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.
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> 2. Usually the delay occurs by reason of non-production of the L.P.C. (last pay certificate) and the N.L.C. (no liability certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasized and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement."

10. In the case of **State of Jharkhand and others vs. Jitendra Kumar Srivastava and another reported in (2013) 12 SCC 210**, the Apex Court held that an employee earns the benefits accruing in the form of gratuity and pension, by rendering long, continuous, faithful and unblemished service. In the celebrated judgment in the case of **D.S. Nakara vs. Union of India reported in (1983) 1 SCC 305**, D.A. Desai,J, while speaking for the Bench in his inimitable style, conceptualized the concept in the following words:

> "18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?
>
> 19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.
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> 20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar [(1971) 2 SCC 330 : 1971 Supp SCR 634] wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh [(1976) 2 SCC 1 : 1976 SCC (L&S) 172 : (1976) 2 LLJ 377] ."

11. The right to receive pension has been recognized akin as a right to property, by the Constitutional Bench judgment in the case of **Deoki Nandan Prasad vs. State of Bihar reported in (1971) 2 SCC 330**. For ready reference, para 27 to 33 is reproduced below:

> "27. The last question to be considered, is, whether the right to receive pension by a government servant is property, so as to attract Articles 19(1)(f) and 31(1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect, we have already adverted to earlier and we now proceed to consider the same.

28. According to the petitioner the right to receive pension is property and the respondents by an executive order dated 12-6-1968 have wrongfully withheld his pension. That order affects his fundamental rights under Articles 19(1)(f) and 31(1) of the Constitution. The respondents, as we have already indicated, do not dispute the right of the petitioner to get pension, but for the order passed on 5-8-1996. There is only a bald averment in the counter-affidavit that no question of any fundamental right arises for consideration. Mr Jha, learned counsel for the respondents, was not prepared to take up the position that the right to receive pension cannot be considered to be property under any circumstances. According to him, in this case, no order has been passed by the State granting pension. We understood the learned counsel to urge that if the State had passed an order granting pension and later on resiles from that order, the latter order may be considered to affect the petitioner's right regarding property so as to attract Articles 19(1)(f) and 31(1) of the Constitution.

29. We are not inclined to accept the contention of the learned counsel for the respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of qualifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the rules. The rules, we have already pointed out, clearly recognise the right of persons like the petitioners to receive pension under the circumstances mentioned therein.

30. The question whether the pension granted to a public servant is property attracting Article 31(1) came up for consideration before the Punjab High Court in Bhagwant Singh v. Union of India [AIR 1962 Punj 503] . It was held that such a right constitutes ‘property’ and any interference will be a breach of Article 31(1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in letters patent appeal by the Union of India. The Letters Patent Bench in its decision in Union of India v. Bhagwant Singh [ILR (1965) 2 Punj 1] approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is ‘property’ within the meaning of Article 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as ‘property’ cannot possibly undergo such mutation at the whim of a particular person or authority.

31. The matter again came up before a Full Bench of the Punjab and

Haryana High Court in K.R. Erry v. State of Punjab [AIR 1967 Punj 279 : ILR (1967) 1 Punj 278] . The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand, to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

32. This Court in State of M.P. v. Ranojirao Shinde [AIR 1968 SC 1053 : (1968) 3 SCR 489] had to consider the question whether a ‘cash grant’ is ‘property’ within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing ‘it is obvious that a right to sum of money is property’.

33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by clause (5) of Article 19. Therefore, it follows that the order dated 12-6-1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and

> 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension Act (23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of writ of mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law.”

12. After the 44th Amendment Act, 1978 w.e.f. 20.06.1979, though the right to property is not a fundamental right but, still, a constitutional right as provided under Article 300-A of the Constitution; and now since the right to receive pension was treated as a right to property, the denial of the same is also violative of a constitutional right.

13. It is no longer *res integra* that in case petitioner has been permitted to retire prior to 60 years of age and even though if he/she has not submitted his option to retire at the age of 60 years, he/she shall be entitled to gratuity. The aforesaid view is also fortified by a decision of a co-ordinate Bench in the case of **Smt. Asha Lata Chaubey v. State of U.P. and others, reported in 2024 (5) ADJ 113**, wherein almost an identical controversy was involved and the petitioner therein, though had not submitted an option to retire at the age of 60 years, rather had submitted an application for voluntary retirement and pursuant to the said application, she had retired at the age of 59 years, 2 months, and 10 days i.e. before the date she would have completed the age of 60 years.

14. This Court held that in view of Fundamental Rule 56 sub-Clause (e) of the Financial Handbook, the government servant is entitled for retirement dues admissible under the Rules and also considered that the Government has issued a Government Order dated 31st July, 2001, providing that even in case of a voluntary retirement, a government servant shall be entitled to retirement dues as per Rules. For ready reference of this Court, paragraph nos. 19 and 20 of **Smt. Asha Lata Chaubey** *(supra)* is reproduced below:

> "19. This Court finds that petitioner has not submitted option to retire at the age of 60 years rather she submitted an application on 29.6.2021 for voluntary retirement and pursuant to said application, she has retired on 31.3.2022 i.e. on completion of age of 59 years 2 months and 10 days i.e. before the date she would have completed the age of 60 years. Fundamental Rule 56(e) of the Financial Handbook provides that if a Government servant retires, he is entitled for retiral dues admissible under the rules and further State Government has also issued a Government Order dated 31.7.2001

> whereby it has been provided that even in the case of voluntary retirement, Government servant shall be entitled for retiral dues as per rules.
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> 20. This Court further finds that petitioner has opted for voluntary retirement and thereby retired before completion of 60 years of age therefore, in view of the provisions made in Fundamental Rule 56(e) of the Financial Handbook read with Government Order dated 31.7.2001, she is entitled for all the retiral dues including gratuity admissible to her under the rules."

15. In view of the aforesaid, this Court is of the opinion that the petitioner is also entitled to a similar relief.

16. The second question, which deserves consideration, is as to whether what rate of interest is payable to the petitioner on the gratuity amount, which has been withheld by the respondents, without any justification.

17. The case of the petitioner is that she is entitled to gratuity for an amount of Rs. 14,34,362/- as per the gratuity rules calculated on the basis of 16 months' salary and, thereafter, from the date it is due, she is entitled to interest of 18% per annum, till the date of actual payment.

18. The petitioner has also prayed that the GPF carried an interest rate of 7.9% per annum, however the petitioner was paid interest only up to 30th August, 2019 though the GPF dues of Rs. 24,71,728/- was paid in the month of January, 2020; and accordingly she claims entitlement for the interest at the rate of 7.9% per annum on the GPF amount of Rs. 24,71,728/- from 1st September, 2019 till 31st January, 2020, which comes to Rs. 73,121/-.

19. As far as the entitlement to payment of interest on the delayed payment of gratuity/retirement benefits are concerned, a Division Bench of this Court in **Special Appeal (Defective) No. 430 of 2016, Smt. Nazma Khatoon v. State of U.P. and others**, has held that interest is a necessary corollary to the retention of money of another person. It is neither compensatory nor penal in nature; and the Division Bench in **Smt. Nazma Khatoon** (*supra*), following another Division Bench decision in **Smt. Ranjana Kakkar W/O Late Prof. Amarnath Kakkar v. State of U.P. and others, reported in 2008 (10) ADJ 63 (DB)**, went on to award 8% interest on the 'gratuity' payable.

20. The decision in the case of **M. Padmanabhan Nair** (*supra*) was also followed with approval in the case of **D.D. Tewari vs. Uttar Haryana**

Bijli Vitran Nigam Limited (2014) 8 SCC 894 and held as follows:

> "4. The learned Single Judge has allowed the writ petition vide order dated 25.08.2010, after setting aside the action of the respondents in withholding the amount of gratuity and directing the respondents to release the withheld amount of gratuity within three months without awarding interest as claimed by the appellant. The High Court has adverted to the judgments of this Court particularly, in State of Kerala V. M. Padmanabhan Nair, wherein this Court reiterated its earlier view holding that:
>
> '1. [the] pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decision of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment to the employees."

21. There is cetana of decisions in which timely payment of retiral dues was emphasized by the Apex Court (Refer: **Vijay L. Mehrotra v. State of U.P. reported in (2001) 9 SCC 687** and **Gorakhpur University vs. Sitla Prasad Nagendra (Dr.) (2001) 6 SCC 591**); and in the case of **S.K. Dua vs. State of Haryana reported in (2008) 3 SCC 44**, the Apex Court held that interest on delayed payment of retirement dues was not contingent to the existence of Statutory Rules, Administrative Instructions and Guidelines and even in absence thereof, the delinquent employee is entitled to claim interest under Part-III of the Constitution of India; and held as follows:

> "14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

22. The Apex Court recently in the case of **Dr. Poornima Advani and another vs. Government of NCT and another reported in (2025) 7**

SCC 269, on the issue of awarding interest on delayed payment held that when a person is deprived from using of his money to which he is legitimately entitled, he has a right to be compensated for the deprivation which may be called interest or compensation. Interest is being paid for the deprivation of use of money in general terms which has returned or compensation for the use or retention by a person of a sum of money belonging to other.

23. In the case of **Commissioner of Income Tax vs. Sham Lal Narula reported in AIR 1963 Punjab 411**, a Division Bench of the High Court of Punjab articulated the concept of interest as under:

> "The words "interest" and "compensation" are sometimes used interchangeably and on other occasions they have distinct connotation. "Interest" in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, "interest" is understood to mean the amount which one has contracted to pay for use of borrowed money. … In whatever category "interest" in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money belonging to another, or for the delay in paying money after it has become payable."

24. The Apex Court in the case of **Dr. Poornima Advani** (*supra*) while emphasizing on the doctrine of restitution, held that the term "restitution" is used in 3 senses:

(i) return or restoration of some specific thing to its rightful owner or status;

(ii) the compensation for benefits derived from wrong done to another;

(iii) compensation or reparation for the loss caused to another.

25. Definition of "Compensation" is reproduced below:-

> "<u>COMPENSATION</u>
>
> The word "compensation" has been defined in P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edn. 2005, p. 918 as follows:
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> "An act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the

> consideration or price of a privilege purchased something given or obtained as an equivalent, the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value, a recompense given for a thing received, recompense for the whole injury suffered, remuneration or satisfaction for injury or damage of every description, remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly, and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer."

26. From the aforesaid, this Court is inclined to hold that pension/gratuity, is not a bounty and an employee earns the same through his longstanding service and as such is a "property", being protected by the Constitutional mandate under Article 300-A of the Constitution of India; and as such he cannot be deprived of his property saved by authority of law; and once he is permitted to retire, prior to the age of 60 years, he/she is entitled to gratuity, in view of Fundamental Rule 56(e) of the Financial Handbook, even if it is a voluntary retirement. The State Government is also bound by its Government Order dated 31.07.2001; and it cannot insist on the requirement of specifically submitting the option, for availing the gratuity, as admittedly, she was permitted to retire, prior to attaining the age of superannuation i.e. 60 years.

27. Further, the claim of the petitioner for payment of interest to delayed disbursal of the "gratuity" also is justified, as it is a valuable right in the form of a property and any culpable delay in settlement and disbursement thereof, must be visited with the penalty on payment of interest at the current market rate, till the actual payment to the employee.

28. Even in absence of Statutory Rules, Administrative Instructions and Guidelines, an employee can claim interest under Part-III of the Constitution, relying on Articles 14, 19 and 21 of the Constitution of India; and it is the duty of the Court to compensate such deprivation by award of interest or compensation.

29. In view of the aforesaid, the following directions are issued to the respondent Authorities.

(i) The respondent Authorities shall calculate the 'gratuity' amount as per the Gratuity Rules and pay the sum within a period of two months from the date of service of a certified copy of this order, along with the interest payable and as directed by this Court, commensurate to the calculation indicated herein above, towards the principal amount of Rs.14,34,362/-.

(ii) The petitioner shall also be entitled to payment of interest on the delayed payment of gratuity, at the rate of 8%, from the date it was due towards the petitioner, i.e. the date on which she was granted the voluntary retirement, which is 31st August, 2019, till the actual date of payment/disbursement of the interest amount. In case, the aforesaid interest is not paid within a period of 2 months from the date of service of certified copy of this order, from the said date till the actual disbursement, 12% interest shall be applicable and the said amount shall be recovered from the disbursement authority's salary.

(iii) The petitioner is also entitled to interest at the rate of 7.9% per annum on the GPF amount of Rs. 24,71,728/- from 1st September, 2019 till 31st January, 2020, which comes to Rs.73,121/-.

30. The present writ petition is **allowed**, with a note of caution to the respondent Authorities that in cases where it is found that the delinquent employee was entitled to the payment of gratuity and still the said gratuity amount was withheld, only to be paid at a later stage, along with the interest, the State Authorities shall recover the said interest component, from the salary of the officer concerned, who is found to have wrongly rejected the claim of the petitioner; and initiate proceedings against the said employee, even if he has retired, if the applicable service Rules, permits such proceedings and as per law.

31. There shall be no order as to costs.

32. The Registrar (Compliance) is directed to send forthwith, a copy of this order to the Principal Secretary (Madhyamik Shiksha), Secretariat Building, Lucknow and the Director (Madhyamik Shiksha), 18 Park Road, Lucknow; and the said respondents shall ensure circulating a copy of this order to all the District Inspector of Schools in the State of U.P. for strict compliance.

(Siddharth Nandan,J.)

July 7, 2026
Prashant D.