

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

+ W.P.(C) 21367/2005

Date of decision: 16th May, 2008

SHAFIQL AIN USMANI Petitioner
Through Mr. S.G. Hasnani, Sr. Advocate with
Mr. Ataul Haque & Mr. Kewal S. Ahuja,
Advocates.

Versus

JAMIA MILLIA ISLAMIA & ORS. Respondents
Through Mr. M.A. Siddiqui, Advocate for
respondent No. 1.
Mr. Amitesh Kumar, Advocate for the UGC.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

ORDER

1. Rule. With the consent of the parties, the matter is taken up for final hearing.
2. The petitioner, Mr. Shafiquel Ain Usmani, has filed the present writ petition for quashing and setting aside order dated 13th

September, 2005 passed by the respondent-Jamia Millia Islamia University, inter alia, directing that the petitioner would retire at the age of 60 years and not at the age of 62 years.

3. The petitioner claims that he is entitled to benefit of notification dated 24th December, 1998 issued by University Grants Commission dealing with superannuation of teachers and other employees. Relevant portion of the said notification reads as under:-

**“16.0.0 SUPERANNUATION AND
REEMPLOYMENT OF TEACHERS”**

16.1.0 Teachers will retire at the age of 62. However, it is open to a University or a college to re-employ a superannuated teacher according to the existing guidelines framed by the UGC up to the age of 65 years.

16.2.0 Age of retirement of Registrars, Librarians, Physical Education personnel, Controllers of Examinations, Finance Officers and such other university employees who are being treated at par with the teachers and whose age of superannuation was 60 years, would be 62 years. No re-employment facility is recommended for the Registrars, Librarians and Directors of Physical Education.”

4. The only question and contention raised before me is whether the petitioner, who was on 31st October, 2005 working as a Workshop Superintendent, is entitled to benefit of the said notification and is to be treated at par with the teachers.

5. On 15th March, 1990, the petitioner was appointed as Training and Placement Officer in Department of Mechanical Engineering. Thereafter, on 18th May, 1990 he was issued appointment letter as a Lecturer in Mechanical Engineering. On 20th April, 1992, the respondent University was pleased to sanction extra duty allowance to the petitioner as a Lecturer for performing extra duties as Training and Placement Officer. The said letter shows that the petitioner was also working as a Lecturer. By Office Order dated 2nd May, 1994, the petitioner was granted promotion/placement as a Lecturer in Senior Scale under the Career Advancement Scheme, 1987. The said Office Order notes that the petitioner was a Member of the Faculty (Department of Mechanical Engineering) and had been appointed in the said Department with effect from 18th May, 1993. The pay scale of the petitioner was equivalent to the pay scale of a Reader.

6. The respondent University published an advertisement on 1st May, 1995 inviting applications for appointment of Training and Placement Officer in the Pay Scale of Rs.4500-7300, which was equal to the pay scale of a Professor and higher than the pay scale of a Reader. However, subsequently it appears that the appointment of the petitioner was made in the grade of a Reader vide letter dated 2nd April, 1996. The grade of a Reader is higher than the grade of a

Lecturer.

7. On 11th April, 1996, the petitioner was informed that as per the recommendations of the Executive Council, a code of conduct had been formulated for teachers. The petitioner was informed that he being a senior Lecturer should ensure that the said code of conduct is complied with and failure to do so would constitute a misconduct.

8. The petitioner has also placed on record minutes of the Executive Council Meeting held on 26th March, 1996 dealing with the status of Placement and Training Officer (Faculty of Engineering and Technology). The relevant portion of the said meeting reads as under:-

“x.(5) Status of Placement & Training Officer (Faculty of Engg. & Technology)”

Resolution No. VIII of the Majlis-i-Islami Academic Council) dated 25.11.92 was placed before the Majlis (Council) for consideration. The Council resolved that the status of Placement & Training Officer in the Faculty of Engineering & Technology. JMI, as per AICTE norms and standards, is of the cadre of a Professor and this post should be treated as non-vocational post. The Officer will have a teaching work load of atleast four contract hours per week.”

9. It is an admitted case of the parties that the petitioner has been taking classes regularly as per AICTE norms. The petitioner has

enclosed with the writ petition time table circulated by the respondent University in which the petitioner has been allocated classes and has been given the responsibility to teach students. As per the norms and standards for educational colleges fixed by All India Council for Technical Education, a Workshop Superintendent is of a rank of an Assistant Professor. He is the head of all workshops in the college and is responsible to the Head of the Department in all matters containing men, material and machines. The job description of a Workshop Superintendent as per the said norms and standards is as under:-

“Job Description

- Planning Scheduling, organizing, co-ordinating and monitoring workshop classes and tasks of the College.
- Plan, deliver and evaluate theoretical and workshop instruction.
- Design, develop and test instructional materials and tasks for skill training.
- Plan and organize staff development programmes for workshop staff.
- Procurement, erection/installation and commissioning of plant and equipment in the workshops.
- Procurement and storage of raw materials, tools, instruments.
- Guide the students in the performance of practical tasks and skill exercises and evaluate their performance.
- Advise and assist students and faculty members in the fabrication of their projects.
- Manage the maintenance of equipment and

tools in the shops including preventive and breakdown maintenance, laydown safety procedures.

- Participate in professional development activities.”

10. It is the contention of the learned counsel appearing for the respondent University that Workshop Superintendent and Training and Placement Officer are being treated as teachers and are being given benefit of enhanced retirement age, but only with effect from 18th May, 2007 after necessary clarification was issued by the University Grants Commission. I have examined the said letter dated 18th May, 2007 written by the University Grants Commission. After notification dated 24th December, 1998, a number of representations were received by University Grants Commission regarding enhancement of age of superannuation to 62 years for the post of Workshop Superintendent. An expert committee was formed to examine the said aspect. The expert committee held that the two officers should be treated as teaching staff cadre and the age of superannuation should be enhanced to 62 years at par with that of the teachers. I feel the said letter is in the nature of clarification of the existing position. The notification dated 24th December, 1998 as quoted above, had enhanced the age of superannuation to 62 years for all university employees, who were

being treated at par with teachers including Registrars, Librarians, Physical Education personnel, Controller of Examinations, Finance Officers and others. Having examined the work profile of a Workshop Superintendent and the nature of job assigned to them, it is apparent that they have been performing same job and work as that of a teacher. Perhaps their job was more technical and required higher skill as they were imparting practical training and had to ensure that the students are able to co-relate and experiment their theoretical knowledge in the workshops. It will not be fair and just to not treat the Workshop Superintendent as teachers. The letter dated 18th May, 2007 did not create or confer any new right in favour of Workshop Superintendent but only clarified the existing position, least there be any doubt.

11. The view I have taken finds support from the decision of a learned Single Judge of this court in W.P. (C) No. 2829/2003 titled ***S. Dildar Haider versus Jamia Milia Islamia & Another***. The petitioner therein was an Instructor and had claimed benefit of extended retirement age on the ground that he should be treated at par with teachers. It was pointed out that the pay scale of Instructors was lower and the educational qualification prescribed were also lower. The respondent University defended its stand on

the ground that Instructors were not teachers and teaching staff comprehends only those persons engaged in imparting education. Reliance was also placed upon letter dated 5th August, 2002, wherein the post of Instructor, Workshop Superintendent, Training and Placement Officer were described as technical and non-teaching post. Learned Single Judge, however, did not agree with the contention raised by the respondent University. It was observed that as per notification dated 24th December, 1998 Clause 16.2.0, Registrars, Librarians, Physical Education personnel, Controller of Examinations, Finance Officers had all been clubbed together and regarded at par with the teaching staff. It was observed that the Instructors cannot be treated as worse off than staff members, who are not performing any academic or teaching duties but performing purely administrative functions. It was held that Instructors can be equated with the said personnel namely Registrars, Librarians, Finance Officers etc. The Court also noticed that there was pre-existing parity vis-à-vis age of superannuation between Instructors and teachers and it was accordingly observed as under:-

“The object of naming a few posts (Registrars, Librarians, etc) and extending coverage of the benefit, “others” therefore was to be expansive – the others necessarily had to be like teachers, (or Registrars/Librarians) but

could never be intended to be only teachers. If the intendment was not to grant benefit of enhanced age of retirement to employees who were at par with teachers- in that respect, like Instructor, the Jamia has not clarified as to who would fall within its sweep. Besides, the reference to “others” has to be given meaning and content – as indeed would be case if it is held to cover instructors; any other interpretation would render the latter part of para 16.2.0 a surplusage.

34. For the above reasons, I find that the petitioner was entitled to the enhanced age of superannuation. Consequently, the impugned letter is hereby quashed. The first respondent is directed to treat the petitioner as having continued in its service till he attained the age of 62 years. The said respondent shall pay the salary for the said period of two years, after adjusting the amount of pension disbursed. Consequential benefits such as enhanced gratuity, provident fund, and higher pension shall be re-fixed, and the differential amounts paid, to the petitioner. All payments directed to be made shall be released/paid to the petitioner within 8 weeks, along with Rs.15,000/- as costs, which too shall be paid within the same period.”

12. Learned counsel for the respondent University at this stage brings to my notice Section 2(n) of the Jamia Millia Islamia Act, 1988, which reads as under:-

“2.(n) "Teachers of the University" means Professors, Readers, Lecturers and such other persons as may be appointed for imparting instruction or conducting research in

the University and are designated as teachers by the Ordinances; 3 of 1956”

13. It is submitted that the petitioner, who was working as a Workshop Superintendent, is not a teacher and there is no ordinance designating Workshop Superintendent as a teacher. The argument is flawed. Notification dated 24th December, 1998 does not restrict the benefit only to teachers but grants benefit to University employees, who are being treated as par with teachers. Therefore, to take benefit of the said notification, an employee need not be a teacher and benefit of extended age of superannuation is available if an employee is at par with teachers. The reasoning given in ***S. Dildar Haider’s*** case (supra) will equally apply to the present case and the contention raised by the learned counsel appearing for the respondent University has to be rejected. Moreover, definition Clause 2(n) is for the purpose of Jamia Millia Islamia Act and not for UGC notification.

14. In these circumstances, the writ petition is allowed. It is held that the petitioner, who was working as Workshop Superintendent is to be treated at par with the teachers in terms of notification dated 24th December, 1998 Clause 16.2.0 and his retirement age is 62 years. The petitioner will be entitled to all consequential benefits including payment of back wages with effect from 1st November, 2005

onwards after adjusting the amount, if any, paid to the petitioner. Consequential benefits like gratuity, provident fund etc. will also be re-fixed. All payments due to the petitioner will be paid/released within eight weeks from today. However, in the facts and circumstances of the case, there will be no order as to costs.

SANJIV KHANNA, J.

MAY 16, 2008
VKR