

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

+ **W.P.(C) 7263/2007**

NIRMALA & ORS. Petitioners
Through: Mr. Raman Duggal, Advocate

versus

GOVT. OF N.C.T. OF DELHI & ORS. Respondents
Through: Ms. Reeta Kaul, Advocate for R1
& R3
Mr. Jitender Khanna, Advocate for
Association of Indian Universities
Mr. Amitesh Kumar, Adv. for UGC
Ms. Zubeida Begum, Adv. for DSSSB

+ **W.P.(C) 8822/2007**

BHARTI KOLI & ANR Petitioners
Through: Mr. Raman Duggal, Advocate

versus

GOVT. OF NCT OF DELHI & ORS Respondents
Through: Ms. Zubeida Begum, Adv. for DSSSB
Mr. Neeraj Yadav for Ms. Ruchi
Sindhwani, Advocate for R-3.

+ **W.P.(C) 1311/2008**

HITESH DHIRIA Petitioner
Through: Mr. Raman Duggal, Advocate

versus

GOVT. OF N.C.T. OF DELHI & ORS. Respondents
Through: Ms. Zubeida Begum, Adv. for DSSSB
Mr. Neeraj Yadav for Ms. Ruch
Sindhwani, Advocate for
respondents.

+ **W.P.(C) 7690/2007**

DAVENDER Petitioner

Through: Mr. Raman Duggal, Advocate

versus

GOVT. OF NCT OF DELHI & ORS Respondents
Through: Ms. Zubeida Begum, Adv. for DSSSB
Ms. Sonia Sharma, Adv. for R1 & R3

DATE OF DECISION:

% 07.07.2008

CORAM:

Hon'ble Mr. Justice Pradeep Nandrajog

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

: **PRADEEP NANDRAJOG, J.**(Oral)

1. Rule.
2. Heard for disposal.
3. A short question arises for consideration in the above captioned petitions.
4. It is not in dispute that all writ petitioners have successfully undergone a graduation course in Jamia Milia Islamia University and each one of them has been awarded a degree by Jamia Milia University certifying that the petitioners hold a degree of Bachelors of Fine Arts (BFA). It is also not in dispute that the said course conducted by Jamia Milia Islamia is a four years course. It is not in dispute that the course is a

degree course. It is also not in dispute, a statement made to this effect today in Court by learned counsel for UGC that Jamia Milia Islamia is a Central Recognized University and is being funded by the University Grants Commission as per applicable rules. It is stated by learned counsel for UGC that the degree in question is recognized by UGC.

5. For 605 vacant posts of drawing teachers a public notice was issued by the Delhi Subordinate Services Selection Board informing eligible candidates that said posts were required to be filled up under the Govt. of NCT Delhi. It was informed that the posts are of drawing teachers in schools established by the Govt. of NCT Delhi.

6. As per the applicable recruitment rules for the post of drawing teachers essential qualifications were notified. The same are as under:-

“M.A. in Drawing and Painting/Fine Art from a recognized university.

OR

B.A. (Hons) in Art and Art Education

OR

B.A./M.A. with drawing and Painting Art/Fine Art/Art with minimum two years full time diploma from a recognized university

OR

Higher secondary/intermediate with minimum four years full time diploma in Painting/Fine Art from a recognized institution/university.”

7. Petitioners applied to DSSSB pursuant to the said public notice. It is the case of the petitioners that the degree awarded in BFA to them by Jamia Milia Islamia is a graduation degree in Hons. i.e. the degree is a B.A.(Hons) degree in Art and Education.

8. Petitioners were a little surprised when their results were not declared by DSSSB. They claim that enquiry made by them resulted in information being supplied that the degree awarded by Jamia Milia Islamia was not a recognized degree.

9. The petitioners obtained certificates from the Head of their Department certifying as under:-

“TO WHOM IT MAY CONCERN

This is to certify that we have modified our B.A.(Hons) in Art and Education course into BFA 4 year degree course in 1982 (applied Painting/Art Education/Sculpture)

Jamia Milia Islamia University made Central University by the act of Parliament vide Jamia Milia Islamia Act 1988 (59) of 1988.

All the courses/degree/diploma/certificates awarded by J.M.I. are recognized by Association of Indian Universities (AIU).

Every citizen of India is bound to recognize the act of Parliament and its decisions.

The denial of any decision of the Parliament is subject

challenge in the Court of Law.”

10. It is thus obvious that Jamia Milia Islamia clearly certified that it is a Central University established by an act of Parliament and that the degree of BFA was nothing but a degree of B.A.(Hons) in Art and Art Education. Notwithstanding that, petitioners did not meet success and hence were constrained to file the aforementioned petitions.

11. In paras 10 to 15 of the writ petitions, petitioners have averred as under:-

“10. That thereafter petitioners and other similarly placed candidates had approached the Respondents for ascertaining the reasons of the non-inclusion of the names of their names in the declared results and also for ascertaining the reasons for not declaring the complete result of 605 posts, the petitioners were informed that the results were with-held because the said recruitment process was held under the Recruitment Rules 1983 and that according to the Respondents the candidates holding the BFA degree issued by Jamia Milia Islamia University were not eligible to appear in the tests held for the Drawing teacher. Accordingly, the petitioners approached Jamia Milia Islamia University, New Delhi for necessary clarifications pursuant to which a certificate dated 10.9.2007 was issued by the Head of Department of the Jamia Milia Islamia University in which it was clearly stated that the University has modified their course in **B.A.(Hons.) in art and education to 'B.F.A. Four year Degree course'** in the year 1982. It was further stated in the said certificate dated 10.9.2007 that the Jamia Milia Islamia was made a Central University by the Act of Parliament vide Jamia Islamia Act, 1988 (Act No.59 of 1988) and all the courses/degrees/diploma/certificates awarded by

the said Jamia Milia Islamia University are recognized by Association of Indian Universities. True and correct copy of the certificate dated 10.9.2007 and 17.9.2007 issued by Jamia Milia Islamia University and relevant portion of the extracts of Jamia Milia Prospectus are correctively marked as **Annexure-P6(Colly).**

11. That immediately thereafter the petitioners had given a representation dated 11.9.2007 to the Respondents wherein the facts stated in the certificate dated 10.9.2007 were mentioned and in addition to the above, it was further clarified that as per the recruitment rules the Two year Diploma course in Drawing from Jamia Milia Islamia University is recognized course whereas the fact of the matter is that there is no such course being held by the said University and that the course of '**B.A. (Hons.) in art and education**' was modified/converted by Jamia Milia Islamia University to '**B.F.A. four year Degree course**' in the year 1982 and so if the course of **B.A.(Hons.)** is recognized than there is no reason to not recognize the BFA course particularly when the same degree of BFA Course issued by Delhi University, Patna University, Punjab University etc. are recognized by the Recruitment Rules 1983. True and correct copy of the representations dated 11.9.2007 is being annexed hereto and marked as **Annexure P-7(Colly).**

12. That, as aforesaid, when the petitioners and other similarly placed persons holding BFA degrees issued by Jamia Milia University, New Delhi were trying to find out as to on what grounds their names did not figure amongst the selected candidates and also as to when the other results will be declared by the Respondents, another advertisement bearing No.07/2007 which was published in Asian Age Newspaper, New Delhi edition dated 12.9.2007 in which vacancies were again declared for fresh recruitment process for Drawing Teacher (Post Code No. 162/2007). In the said advertisement list of recognized Institutions appeared, wherein BFA (Degree), Delhi is

recognized. The Contention of the Petitioners is that the Petitioners have obtained **BFA (Degree) from J.M.I. University, Delhi** and as mentioned above the candidates having passed **BFA (Degree) from Delhi University** were selected for appointment by the Respondents, whereas, the Petitioners who are similarly situate as the one who have passed from Delhi University, have been in arbitrary and discriminatory manner denied appointment. True and correct copy of the relevant portion of the newspaper advertisement bearing No.07/2007 published in the Asian Age New Delhi edition dated 12.9.2007 is being annexed hereto and marked as **Annexure P-8.**

13. That immediately thereafter the petitioners had given two representation both dated 13.9.2007 wherein the action of the Respondents were challenged whereby the Respondents were challenged whereby the Respondents had taken the stand that the Recruitment rules, 1983 was the rules which were followed for recruiting the Drawing Teacher and accordingly, the qualification mainly BFA degree issued by the Jamia Milia Islamia University was not considered as a recognized course and on that ground the candidature of the petitioners were not considered for appointment. It was further contended that aforesaid stand of the respondents was not tenable in law in view of the fact that the said degree granted by JMI is recognized degree which is equivalent to B.A.(Hons.) degree which is a recognized course. It was further stated that in fact, the Jamia Milia Islamia University used to conduct the B.A. (Hons.) degree in arts and art education and that the said degree was stipulated as the qualifying degree in the advertisement for the Drawing Teacher and the subsequently the nomenclature of the said degree was changed to BFA in art education and hence for all practical and other purposes the BFA in art education and hence for all practical and other purposes the BFA degree is equivalent to the degree of B.A. (Hons.) in art and art education degree issued by the Jamia Milia Islamia University, New Delhi which is a Central University. The copies

of the prospectus and certificate issued by the JMI University were also attached with the said representation dated 13.9.2007. It was further submitted in the said representation dated 13.9.2007 that the BFA degree is also granted by Delhi University, having similar curriculum as in JMI for BFA Degree and the candidates having BFA degree from Delhi University have been selected in the results declared on 2.9.2007 and hence there was no reason for the Respondents not to consider the name of the petitioners for the appointment on the post of Drawing Teacher (TGT) only on the ground that the BFA degree being held by them from Jamia Milia Islamia University is not shown to have been there in the list of courses recognized in the advertisement/RR. It was further stated that in the Recruitment Rule, 1983 it was mentioned that 2 years diploma course in Drawing from Jamia Milia Islamia University is recognized whereas the fact of the matter is that Jamia Milia Islamia University does not even conduct any such course at present. It was also pointed out that many candidates holding BFA Degree from JMI have been appointed by as Drawing Teacher (TGT) in Kendriya Vidhyala Sanghatan wherein the BFA Degree from any recognized University is eligibility qualification. A copy of RR's of Kendriya Vidhyala Sanghatan for the Post of Drawing Teacher is annexed as **Annexure P-9.** In fact, the BFA Course is the only course, which has been done by the petitioners which is available in the Jamia Milia Islamia University as Bachelor Degree. At this stage itself it will be relevant to note that interestingly, the candidates who have done MFA course from the same Jamia Milia Islamia University have been selected in the results declared on 2.9.2007 and in this regard it may be noted that the MFA course has not been prescribed in the advertisement as a basic essential/desirable eligibility course and anybody doing the MFA course. It is therefore, clear that the once the Degree in MFA has been recognized by the respondents as one of the recognized eligibility courses then there is no reason for not accepting the BFA course as one of the recognized eligible courses for the said post.

The petitioners had sought for the declaration of the results of the candidates holding BFA degree issued by Jamia Milia Islamia University, New Delhi. True and correct copy of representation dated 13.9.2007, along with the relevant extract from the prospectus issued by Jamia Milia Islamia University, are being annexed hereto and marked as **Annexure P-10 and P-11.** Respectively.

14. That at this stage itself it will be important to point out that the recruitment for the post of Drawing Teacher is conducted the year 2006 by DSSSB and prior to that the Director of Education used to recruit the said Drawing Teachers as direct recruits as per present RR's and during the year 1993 to 1998 various persons were selected as Drawing Teachers by the Directorate of Education who were holding the same BFA Degree issued by Jamia Milia University, New Delhi and so it is not open for the Respondent to even contend that the BFA course of Jamia Milia University is not a recognized course of being selected as Drawing Teacher. The Particulars of such candidates now working in the various schools under the Directorate of Education are annexed hereto and marked as **Annexure P-12.**

Furthermore, it is significant to note that in terms of Respondent No.2 Recruitment Regulation for the post of PGT/Lecturer (Painting) which were amended and notified in 1985, BFA and also B.A. (Hons.) in Arts and Art Educations, Jamia Milia Islamia University is prescribed eligibility qualification. A copy of said RR's for the post of PGT/Lecturer is annexed as **Annexure P-13.**

15. That before proceeding further, it will be important to point out that Delhi Administration had issued a Notification dated 15.12.1983 in exercise of the powers conferred under the proviso of Article 309 of the Constitution of India read with the Govt. of India, Min. of Home affairs, Notification No. F.27/59 – HIM (i) dated 13.7.1959 whereby the Administration of Union-Territory of Delhi was pleased to make certain amendments in the

schedule annexed with the notification dated 5.9.1981 which contained the rules regarding the method of recruitment and the qualifications necessary for the appointment to the post of Drawing Teacher (Excluding Geometrical and Mechanical Drawing) in the Directorate of Education, Delhi. In the said amendment, it was stated that under column 7 (Educational and another qualifications required for direct recruits) **'B.A. (Hons.) in Art and Art Education'** was provided as one of the courses required for the appointment on the said post. In the 'NOTE' of the said notification it was provided that the particulars of the recognized institutions for various courses may be prescribed by the administration from time to time, The Petitioners understand that after 1983 notification no particulars of recognized Institutions has been notified as is evident from the advertisement itself. It may be pointed that list of recognized Institutions provided in the **RR's** prior to amendment in 1983 have become out dated in as much as, there is no more five year diploma course etc; as shown in the said recognized Institutions. True and correct copy of the Notification dated 15.12.1983 is being annexed hereto and marked as **Annexure P-14.** It may also be stated at this stage itself that the Recruitment Rules for the post of Drawing Teacher were initially issued vide Notification No. F-26 (9)/59-R&S, dt. 28.6.1960 which was subsequently amended vide notification No.F.2 (9)/80-S.II dated 05.09.1981 and then it was amended for the last time in the year 1983 vide Notification No.F.2(9)/80-S, dated 15.12.1983 in the said recruitment rules B.A. (Hons.) in Art and Art Education has been prescribed as one of the recognized courses and this fact when read with the fact, **firstly** the Jamia Milia Islamia University had admittedly modified their course of 'B.A. (Hons.) in art and education' to 'BFA four year degree course' and **secondly** that the degree of BFA course awarded by the other Universities and the MFA course awarded by Jamia Milia Islamia University have been accepted to be recognized courses; makes it clear that there is no reason/occasion for the respondents to not

consider the course of BFA degree conducted by Jamia Milia Islamia as eligible course.”

12. In the response filed by the Govt. of NCT Delhi, the appointing authority, the said averments have been responded to as under:-

“10-12. In reply to paragraphs 10 to 12 of the writ petition, it is further reiterated that as per existing Recruitment Rules for the post of Drawing Teachers, the degree of BFA issued from Jamia Milia Islamia is not mentioned as the eligible/required qualification for the post of Drawing Teachers. Therefore, the petitioners are not eligible for the post of Drawing Teachers. However, it is stated that the application for 4 years course is still under consideration.

13-16. In reply to paragraphs 13 to 16 of the writ petition, it is respectfully submitted that the answering respondents are bound to appoint the teachers as per the existing Recruitment Rules and in the present Recruitment Rules, the BFA degree of Jamia milia Islamia is not mentioned as eligible qualification for the qualification for the post of Drawing Teachers, therefore, the petitioners are not eligible for the post of Drawing Teachers.”

13. The response of DSSSB is that apart from a graduation degree the further eligibility requirement is of two years diploma.

14. Having heard learned counsel for the parties and considered the rules in question the position which flows out is that neither respondent has denied the status of Jamia Milia Islamia as a centrally recognized university. As noted hereinabove, by way of abandon caution it may be noted that

the stand of the University Grants Commission through its counsel, orally informed to the Court is that UGC recognizes all degrees awarded by Jamia Milia Islamia.

15. Learned counsel for UGC states that the degree in question has been specifically recognized as a recognized degree by UGC.

16. Indeed, as per the counter affidavit filed by the respondents the entitlement of Jamia Milia Islamia to award degrees is undisputed.

17. The only further question which arises for consideration is what is the status of the degree in question.

18. From a perusal of the averments made in the writ petition and in particular the certificate dated 10.9.2007 issued by the Head of the Department Jamia Milia Islamia University, Department of Fine Art and Art Education it is apparent that the BFA four year degree is a Hons. degree in graduation.

19. A perusal of the eligible recruitment rules show that two kinds of graduation degrees are recognized. Firstly, an hons. degree in graduation is recognized. Secondly, an ordinary B.A. degree i.e. an ordinary degree in graduation is also recognized. The requirement of a two years full time diploma is relatable to a graduation degree without honours. The eligible recruitment rules do not require a two years full

time diploma where the candidate holds a Honours degree in graduation.

20. In this connection it is not out of place to record that it is the positive case of the petitioners that even Delhi University is awarding a BFA four years degree course which is being treated as a Honours degree in graduation by the respondents. Thus, I see no reason why similar BFA four years degree course awarded by Jamia Milia Islamia be not recognized as a B.A. Hons. Degree. In fact, as noted above, the nomenclature of the degree may be a Bachelors in Fine Art degree but as clarified by the university it is actually a Honours degree in graduation.

21. Before concluding it may be noted that in response to a query under the Right to Information Act made by the petitioners response of the respondents is that since 1983 till 2007 respondents have appointed numerous drawing teachers as trained graduate teachers who have obtained a BFA degree. It is thus obvious that even the respondents have been accepting BFA degree as a recognized degree equivalent to a B.A.(Hons.) degree.

22. Learned counsel for the respondents have shown the original recruitment rules where the names of recognized institutions have been mentioned. Pertaining to BFA degrees

only the degree awarded by Delhi University has been shown as a recognized degree.

23. I have specifically queried learned counsel for the respondents whether this recognition is an in-house job of the respondents or is backed up by any communication from the Association of Indian Universities on the issue of recognition. Learned counsel for the respondents have failed to answer the question much less show any communication from the Association of Indian Universities that degree issued in BFA only by Delhi University is recognized by it.

24. Once again, it need hardly be reemphasized that Jamia Milia Islamia is a university established by an Act of Parliament and is recognized by UGC. It is funded by UGC, the course in question run by the University is recognized by UGC, in that UGC, has permitted Jamia Milia Islamia to not only conduct a graduation course (Honours) in BFA but has authorized it to award degrees to successful students.

25. Looked at from any angle, the writ petitions have to be allowed.

26. Before concluding it is informed by learned counsel for the petitioners a fact not disputed by learned counsel for the respondents that candidates lower in merit than the petitioners have been appointed by the respondents.

27. Notwithstanding that I still grant an opportunity to the respondents to reverify the said fact.

28. While allowing the writ petitions I declare that since petitioners hold a BFA degree awarded by Jamia Milia Islamia in Bachelors of Fine Arts, which is pursuant to a four years degree course undertaken by the petitioners, and the degree is a Hons. degree in graduation, petitioners are eligible for appointment under the respondents. So holding I direct the respondents to forthwith declare the results of the petitioners and if the petitioners are successful candidates petitioners would be forthwith issued the appointment letters subject to completion of codal formalities. Petitioners would be entitled to all consequential benefits pertaining to fixation of their seniority but not payment of past wages if consequent to the present order petitioners have to be given employment under the respondents.

29. No costs.

PRADEEP NANDRAJOG, J.

JULY 07, 2008
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