

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

+ **WP(C) No.920/2012**

% **April 25, 2013**

HAMDARD UNIVERSITY TEACHER'S ASSOCIATION & ANR.

..... Petitioners

Through: Mr. P.H. Parekh, Senior Advocate with Mr. Mohd. Usman Siddiqui, Mr. M. Tarique Siddiqui, Advocate, Ms. Aisha Siddiqui, Advocate, Mr. Aditya Gaur, Advocate and Mr. Vishal Prashad Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Ruchir Mishra, Advocate for respondent No.1.
Mr. Amitesh Kumar, Advocate for respondent No.2.
Mr. Neeraj Kishan Kaul, Senior Advocate with Ms. Maninder Acharya, Senior Advocate, Mr. Saket Sikri, Advocate, Ms. Ekta Sikri, Advocate and Mr. Sudeep Dey, Advocate for respondent Nos.3,4 and 6.
Mr. Mushtaq Anand, Advocate with Ms. Sahiba Chand Saheb, Advocate for respondent No.5.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **Yes.**

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by two petitioners. Petitioner No.1 is Hamdard University Teacher's Association (HUTA). Petitioner No.2 is Dr. Mahmooduzzafar. By the writ petition, a challenge is laid to the continuation of the respondent No.5 as the Vice Chancellor of the respondent No.6-University till the age of 70 years. I am not reproducing all the prayer clauses inasmuch as the basic contention is that the respondent No.5 should not be allowed to continue till the age of 70 years or contractual period ending in October, 2013 since his tenure completes at the age of 65 years (having crossed the same) and the amendment which has been carried out in the rules and regulations of the respondent No.3-University to increase the retirement age of a Vice Chancellor to 70 years is illegal for the reasons which I will set out subsequently. In order to clarify the factual aspects, further so far as the contention of illegal continuation of the respondent No.5 is concerned, I may state that the appointment letter dated 22.9.2008 appointed respondent No.5 for five years or till the age of 65 years whichever is earlier and in the present case the respondent No.5 has already attained the age of 65 years but is sought to be continued for a period

of five years on the ground that rules and regulations of the respondent No.6 have been amended to increase the age of retirement of the Vice Chancellor to 70 years.

2. Before commencing arguments by the counsel for the parties, I heard the counsel for crystallizing the issues which will be called for decision by this Court. As per the submissions of the counsel for the parties, the following issues would arise for consideration:-

(i) Whether the respondent No.6-University has complied with Rule 40 of the Rules and Regulations of the respondent No.6 for bringing about the amendment for increasing the age of the Vice Chancellor to 70 years. The relevant rule prescribing the age is Rule 16 and the unamended language of which prescribed the age of retirement of the Vice Chancellor as 65 years.

Related with this main issue, a sub issue will be as to whether the two requirements stated in Rule 40 have been followed viz firstly of the executive council complying with the provision of Section 12 of the Societies Registration Act, 1860, (which requires two meetings of the society with 3/5th majority to bring about the amendment in the rules and regulations) and secondly, whether the amendment to increase the age has

not become effective because there is lack of requisite concurrence from the Government of India to the amendment brought about.

(ii) Whether there is required prior approval of the University Grants Commission (UGC) for implementing the resolution of the Executive Council of the respondent No.6 to increase the age of Vice Chancellor from 65 years to 70 years, (and if so which is that regulation or direction of the UGC which has been violated) or if approval of UGC is required whether such approval has or has not been obtained.

3. In order to have a proper appreciation of the issues at hand, at the outset I would seek to reproduce the relevant provisions of the rules and regulations of the respondent No.6, the relevant provisions of Societies Registration Act, 1860, relevant guidelines and regulations issued by the UGC from time to time and Section 3 of the University Grants Commission Act, 1956. These relevant provisions/rules/guidelines are as under:-

Rules of respondent No. 6/University

“Rule 40. ALTERATION, AMENDMENT AND ADDITIONS IN THE MEMORANDUM/RULES

The Memorandum or Rules of the Jamia shall be altered amended and added to by the Executive Council in accordance with the procedure laid down under Section 12 and 12A of the Societies Registration Act, 1860 as in force from time to time provided that any such alteration, amendment

and addition in the Memorandum or Rules of the Jamia shall become effective only after receipt of the concurrence from the Government of India.

Rule 16. Vice-Chancellor

The Vice-Chancellor shall be whole-time salaried officer of the Jamia and shall be appointed by the Chancellor from a panel of three names suggested by a Committee and shall be governed by the terms & conditions of service specified by the Bye-Laws. The composition of the above Committee shall be:

- i) A nominee of the Chancellor (Chairman)
- ii) A nominee of the Chairman, U.G.C.
- iii) A nominee of the Executive Council. Provided further that if the Chancellor does not approve of any of the persons so recommended, he shall call for a fresh panel.

The Vice-Chancellor shall hold office for a term of five years. He shall be eligible for reappointment.

Provided that notwithstanding the expiry of the said period of five years, he shall continue in office for one year or till his successor is appointed and assumes office, whichever is earlier.

Provided further that a person appointed as a Vice-Chancellor shall retire from office during the tenure of his office or extension thereof as soon as he completes the age of 65 years.

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Societies Registration Act, 1860

Section 12. Societies enabled to alter, extend or abridge their purposes.-Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend, or a bridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society;

but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for

the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

Regulation/Rules of UGC

Rule 32. Alternation, Amendments, and Addition in the Rules

The Rules and Bye-laws of the institute may be altered, amended and added to by the Board of Management in accordance with the provision of the Societies Registration Act, 1860 as in force for the time being provided any such alterations, amendments and additions in the Rules of the institute shall become effective only after the receipt of concurrence of the Government of India.

Regulation 25. Alteration, Amendments and Additions to the Rules governing the functioning of the institution deemed to be university

No Rule and Bye law governing the functioning of the institution deemed to be university may be altered, amended and added to by the Board of Management or such other competent body to the effect that it is in conflict with or to the detriment of the provisions of these Regulations; and, no alteration, amendment or addition to the Rules and bye laws shall be given effect to without the prior approval of the Commission in accordance with the provision of the Societies Registration Act, 1860 or the relevant Public Trust Act as in force for the time being.

UGC Act

Section 3. Application of Act to institutions for higher studies other than Universities

The Central Government may, on the advice of the Commission, declare by notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of section 2.”

4. The first aspect to be addressed is the compliance of Rule 40 of

the Rules and Regulations of the respondent No.6. On a literal construction
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of Rule 40 there is undoubtedly a requirement for the amendment to be carried out by the Executive Council in compliance of Section 12 of the Societies Registration Act, as also concurrence being obtained from the Government of India.

Let me firstly take whether ingredient of Rule 40 as regards the compliance of Section 12 of the Societies Registration Act, 1860 has or has not been made.

5. (i) A reading of Section 12 of the Societies Registration Act, 1860 shows that the said provision has been made for altering the purposes and the objects for which a society is framed. A very strict procedure is provided for amendment of the purposes and objects inasmuch as surely it cannot be disputed that the very basis for existence of a society is its objects and purposes. For change of objects and purposes therefore a very strict requirement exists in Section 12 of the agenda being passed by the society with 3/5th of the members voting in favour of the amendment and also of a second meeting being convened of the governing body at an interval of one month after first meeting for giving confirmation to the voting made in the first meeting which brought about amendment to the objects and purposes of the society.

(ii) The question is that whether there should be a literal interpretation and application of Section 12 of the Societies Registration Act, 1860 when a deemed University such as the respondent No.6 seeks to amend those rules and regulations which do not pertain to objects and purposes of the society which is running the deemed university.

In my opinion, a literal interpretation of Rule 40 read with Section 12 that there must be held two meetings of the governing body of the society and only whereafter it can be said that the amendment in terms of Rule 40 would be a proper amendment, is not the correct interpretation for amending those rules which do not pertain to the objects and purposes of the society. In my opinion, Rule 40 has to be interpreted to mean that only the substance of procedure under Section 12 of the Societies Registration Act, 1860 will have to be followed whenever there is an amendment to be brought about to the rules and regulations of the respondent No.6 not pertaining to objects and purposes or same genus i.e there must be compliance of 3/5th of the members of the society agreeing to bringing about the amendment in the rules and regulations, but as regards those rules and regulations which pertain not to the objects and purposes of the society, in my opinion, the procedure of having only one meeting should be taken to be

sufficient and I would not like to read Rule 40 in such a technical manner so as to read in compulsory two meetings of the governing body of the society for the same subject. After all what is the purpose which is achieved by requiring a second meeting of the governing body of the society for amendment to rules which are not in the nature of crucial amendment like towards the objects and purposes of the society. After all there are bound to be amendment to those rules which are not fundamental to the existence of the University, and for which it would be too much to require two meetings for such minor issues.

6. I must state that in the facts of the present case however even factually the governing body of the respondent No.6 has passed two resolutions for approving the amendments made to Rule 40. The first resolution of the society is at the 12th meeting dated 28.3.2009 and the second resolution is at the 13th meeting on 2.4.2012. Of course, I must hasten to add that photocopies of the minutes of the 13th meeting dated 2.4.2012 were given to me by the counsel for the respondent No.6 after parties were heard but I have no hesitation to take the same on record because I cannot doubt that this would indeed be the resolution passed by the governing body of the respondent No.6. As a matter of abundant caution I

however direct that the photocopy of this resolution be once again placed on record by affidavit within a period of one week from today by respondent No.6-society. Further I note that learned senior counsel for the petitioners has very vehemently objected to take on record of the photocopies of the 13th minutes of the meeting dated 2.4.2012, however, considering that I have accepted the genuineness of the document I overrule the objection and take this document on record.

7. While on this issue of compliance of Rule 40, I must also, for the purpose of record, refer to the argument urged on behalf of the petitioners that in the 12th meeting of the respondent No.3-society dated 28.3.2009 it is only mentioned that the society has perused and noted the above decision of the Executive Council and therefore it should be held that there is no approval by the society of the decision of the Executive Council taken on 14.3.2009.

Once again I am unable to agree with the arguments urged on behalf of the petitioners inasmuch as the language of 'perused and noted' contained in the relevant portion of the minutes of meeting of the respondent No.3-society dated 28.3.2009 can only be read that the society has approved the decision of the Executive Council held on 14.3.2009, because if the

decision of the Executive Council was for not approving the resolution, then, the language would have been in the nature of the governing body rejecting or not approving or similar such language showing that governing body did not approve the decision of the Executive Council taken on 14.3.2009.

8. To complete the narration I mention that it is not disputed by either of the parties that there are a total of 27 members of the governing body of the respondent No.3-society. The resolution is approved firstly by 24 members i.e more than $3/5^{\text{th}}$ members of the society by the minutes of the meeting dated 28.3.2009, and thereafter, 20 members have signed the subsequent minutes of the meeting dated 2.4.2012 i.e once again the requirement of $3/5^{\text{th}}$ members of the society having approved the resolution stands satisfied.

9. Let me now turn to the next aspect of the concurrence of the government which is argued to be required by the respondent No.6-University before implementing and bringing about the effective amendment to Rule 40 of the regulations. Petitioner as regard this argument has been supported by the arguments urged on behalf of the UGC/respondent No. 2.

10. No doubt Rule 40 uses the expression 'concurrence of the government' and which expression is taken from the same expression as

found in the Model Rules and Regulations required to be adopted by the University as per the UGC guidelines, however, in my opinion the expression 'concurrence of the government' has to be given a contextual interpretation i.e the Government can only step in when a legislative provision entitles the government to assume powers to give concurrence. Merely because a rule in the Rules & Regulation (which are not statutory) of a University requires government of India to give concurrence there is no legal bindingness on right/obligation for the Government of India to give concurrence. Putting it in another way Government of India itself in fact can take up a stand that unless a statutory provision binds the government to exercise the duty of giving concurrence the government is not bound and cannot be called upon to give concurrence. The argument urged on behalf of the UGC that since the UGC itself acts as per guidelines of the Central Government, therefore the Central Government is required to give concurrence is not an argument which I am not inclined to accept because Section 3 of the UGC Act is a section providing for an overall supervisory position of the Central Government qua UGC and for issuing directions to the UGC and thus it is only through the UGC that the Central Government acts. Section 3, in my opinion, does not in any manner provide for an

intervention or a requirement of direct approval/ administrative supervision of a deemed University directly by the Central Government. Central Government necessarily functions through the UGC by virtue of Section 3 and therefore really the expression ‘concurrence of the government’ will have to be read to mean that the deemed University has to comply with the directions of the Central Government issued through the UGC. No other meaning can be escribed to the language of Section 3 of the UGC Act and which only provides for general overall control of UGC by the Central Government.

11. The matter can also be looked at in another way with regard to expression ‘concurrence of the government’ as found in Rule 40 of the Rules and Regulations of the respondent No.6. Government actually ought to mean the governmental body with whom the University has to interact in performance of its functions or the body which will control the functions and the activities of the University. Since the University has to act as per directions of UGC, therefore in my opinion, the expression ‘government’ as found in Rule 40 actually will have to be read to mean the UGC.

12. Accordingly, both the contentions urged on behalf of the petitioners that the twin requirements of Rule 40 have not been complied

with and therefore there is no proper amendment to Rule 16 whereby the age of the Vice Chancellor has been increased to 70 years are arguments which have no substance and are rejected accordingly. It also be noted that the arguments of the UGC urged before me are also dismissed in terms of dismissal of the two arguments of the petitioners which I have rejected above.

13. The only other issue which is required to be addressed and which has been addressed by the petitioners and the UGC is that the prior approval of UGC is inbuilt as a requirement in Rule 40 of the Rules and Regulations of the respondent No.6 as it is based on the Model Rules and Regulations UGC, and also because of Regulation 25 contained in Annexure I to UGC (Institutions deemed to be University) Regulations, 2010.

14. I have already reproduced above, the subject Rule 25 which is relied upon on behalf of UGC. Firstly, the Regulation 25 relied upon has no application to the facts of the present case because regulations relied upon have been framed on and after 21.5.2010 whereas we are concerned with the amendment to Rule 40 which has been carried out in the year 2009 and therefore the UGC-2010 Regulations cannot apply to actions completed in the year 2009 because it is not and also cannot be the contention that the

2010 Regulation apply retrospectively. There is nothing whatsoever in the 2010 Regulations causing their retrospective application. Even for the sake of arguments if we assume that Regulation 25 applies and which requires that no alteration amendment or addition to the rules and byelaws of a University shall be given effect without the prior approval of the commission, in my opinion, this requirement also stands complied with when we refer to the language of the UGC's letter dated 6.11.2008. A reference to this letter shows that there is in fact granted a permission by UGC to amend the rules to increase the age to 70 years and the only requirement of the letter dated 06.11.2008 was that the rules of the deemed University have to be amended before implementing the decision by the University. The letter dated 6.11.2008 cannot be read in a restricted manner which is sought to be argued on behalf of the petitioners and in fact I must express my distress at the very shallow argument which is urged on behalf of the UGC to effectively cut down the scope and application of its own letter dated 6.11.2008 which leaves no room for any ambiguity whatsoever. The fact that no room for ambiguity is left becomes clear from the language of the letter dated 6.11.2008 and which is reproduced herein:-

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Speed-Post

No.F.8-1(7)/2006(CCP-1)
The Vice-Chancellor/Director
Jamia Hamdard,
Hamdard Nagar,
New Delhi-110 062

November, 2008

Subject: Revision of the age limit of Vice-Chancellor/Directors of Deemed to be universities.

Sir,

As you are aware, the age of superannuation of Vice-Chancellor/Directors of Deemed to be Universities is at present 65 years as per the model MoA/Rules under UGC guidelines. The Commission in its 452nd meeting held on 7th & 8th October, 2008 decided to raise the age of superannuation of Vice-Chancellor/Directors of the deemed to be universities from 65 to 70 years subject to the condition that the MoA/Rules of Deemed university may **be suitably amended before implementing the decision.**

Yours faithfully

(K.P. Singh)”

15. On a pointed query put to the counsel for the UGC, counsel for the UGC has failed to point out to me any averment in the counter-affidavit specifically stating that the letter dated 6.11.2008 issued by the UGC does not amount to grant of permission under Regulation 25 or the relevant Model Rules and Regulations as applicable at the relevant point of time. Therefore the arguments urged orally on behalf of the UGC need to be rejected for this reason also.

16. On behalf of the petitioners, reliance was placed upon a judgment of a Division Bench of this Court in the case of ***Jawaid Rahmani WP(C) No.920/2012***

and Anr. Vs. Union of India and Ors. in W.P.(C) No.857/2011 decided on 9.12.2011 (Annexure P-11 to the petition) to argue that the amendment of the Rules by which the age of the Vice Chancellor has been increased to 70 years cannot create rights in favour of the respondent No.5 to act as Vice Chancellor beyond the period of 58 years inasmuch as respondent No. 5 was appointed before the amendment increasing the age to 70 years, however, the judgment which is relied upon in my opinion cannot have any application to the facts of the present case because the said judgment deals with the issue whereby vested right is given of continuing upto the age of 58 years can be taken away by reducing the tenure to three years instead of five years, and which right to continue till 58 years was sought to be taken away by the amendment brought about in the Rules. For this reason that vested right cannot be taken away by amendment and it was ruled that the rules as applicable when appointment took place will apply and not the amended rules to the appointment of the respondent No.2 in the said case. In the present case, there is no issue of any vested right being taken away and on the contrary there is a legal right of continuing till 70 years being given by virtue of the amendment of the rules and regulations by the respondent No.6-University. Therefore the said judgment relied upon on behalf of the

petitioners does not apply to the facts of the present case and which becomes clear from para 20 of the said judgment which reads as under:-

“20. As far as the aspect of continuance of the respondent No.2 in the post is concerned, the counsel for the petitioners have not been able to dislodge that the Recruitment Rules subsequently framed in the year 2006 would not affect the appointment made ten years prior thereto of the respondent No.2. Though the initial appointment of the respondent No.2 in the year 1997 was for a period of five years or till the age of 58 years whichever is earlier but subsequently in the year 1999, the respondent No.2 was absorbed in the post. Thus the respondent No.2 cannot be removed from the post merely because the recruitment rules subsequently framed in the year 2006 provide the tenure of the said post as for three or maximum five years.”

17. In view of the above discussion and conclusions, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

APRIL 25, 2013

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