

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

+ **WP(C) No.1815/2013**

% **March 19, 2013**

ISHTIYAQUE AHMAD Petitioner

Through: Mr. A. Hassan &
Mr. Abrar Ahmad, Advs.

versus

VICE CHANCELLOR, JAMIA HAMDAARD UNIVERSITY AND
ANR Respondents

Through: Mr. V.K.Rao, Sr. Adv. with
Ms. Ekta K. Sikri, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by the petitioner-Professor Ishtiyaque Ahmad seeking three reliefs. First is challenge to the order dated 4.2.2013, and which order upheld the action of the Vice-Chancellor in removing the petitioner from the post of Head of Department of Islamic Studies and Social Sciences. The second relief claimed in the writ petition is challenge to the show-cause notice dated 25.2.2013 initiating departmental proceedings against the petitioner. The third relief is really a consequential relief on the petitioner being continued in the post of Head of Department, however I note

that no cause of action is laid out as to how the petitioner can be appointed as a Dean of Faculty of Islamic Studies and Social Sciences and how the requirements or qualifications are met by the petitioner.

2. The facts of the case are that the petitioner, a professor of the respondent No.1/University namely Jamia Hamdard University, was appointed as a Head of Department of Faculty of Islamic Studies and Social Sciences vide order dated 22.11.2010 which specified the period of his appointment as three years upto 31.10.2013 or till further orders, whichever is earlier. The petitioner was removed from the post of Head of Department of Islamic Studies and Social Sciences vide order dated 16.11.2012 whereby another person Sh.G.Y.Anjum was appointed as the HoD. Be it noted that the petitioner continued to be of the rank of the Professor in the respondent No.1/University. Petitioner earlier filed a writ petition challenging the order dated 16.11.2012, and which WP(C) No.7596/2012 was disposed of by treating the writ petition as an appeal in terms of Rule 16 of the Rules and Regulations of the respondent No.1. The appropriate authority of the respondent No.1 has thereafter passed the impugned order dated 4.2.2013 confirming the removal of the petitioner from the post of HoD. The respondent No. 1 has also issued a show-cause notice dated 25.2.2013 against the petitioner and which is accompanied by the detailed articles of charges. There are as many as five articles of charges with respect to the petitioner

being guilty of negligence, misconduct and doing acts unbecoming for an employee of the respondent No.1/University. I need not refer to in detail the articles of charges which are contained at pages 55 to 57 of the paper book.

3. On behalf of the petitioner great emphasis is placed upon the fact that the impugned order dated 4.2.2013 is illegal because when the petitioner was appointed as Head of Department, there was no provision in the Rules of the respondent No.1/University that a person could be appointed as a Head of Department for a particular number of years or till further orders. Stress is laid out on the aspect that there is no provision in the Rules for an appointment to be “till further orders”.

4. It is argued so far as the chargesheet dated 25.2.2013 is concerned that the said chargesheet is malafide and issued at the instance of the Vice-Chancellor who was instrumental in removing the petitioner from the post of HoD.

5. I have recently had an occasion to consider the aspect as to the effect of removal of a person from a post, and which removal does not entail any loss of pay except that a person would have lesser duties than the person had in that post from which he is removed. This judgment I have passed in the case of *Ritu Kaushal vs. Directorate of Education & Ors.* in WP(C) No. 3857/2012 decided on 6.3.2013. In the judgment of *Ritu Kaushal (supra)*, I have reproduced the ratio of the judgment of a Division

Bench of three Judges of the Supreme Court in the case of ***K. Gopaul vs. The Union of India & Ors AIR 1967 SC 1864*** which lays down that if a person is removed from the post of Head of Department, the same does not amount to reduction of status or rank merely because certain powers are enjoyed by a person at the post from which he is removed and the lesser post involved lack of such powers and a lesser number of duties to be performed. Paras 8 to 11 and 13 of the said judgment are relevant and are reproduced hereunder and which paras also reproduce the ratio of the Supreme Court judgment in the case of ***K. Gopaul (supra)***:

8. The next issue is whether even if there is no reduction in pay or emoluments, and there is no specific compulsory post of a Primary Wing Coordinator which had to be necessarily filled up as a post with a specific pay- scale, would still the petitioner be said to be aggrieved, and does the ratio of the judgment of the case of ***Paramjit Gill (supra)*** apply in the present case? Learned Single Judge while deciding the case of ***Paramjit Gill (supra)*** rightly held in the facts of that case that there did take place a loss of status and post for the petitioner because in the case of ***Paramjit Gill (supra)***, the petitioner Paramjit Gill was specifically appointed right from day one to the post of Head of Primary Wing. The petitioner applied for the post of the Head Primary Wing, and after competing with others she was selected to the said specific post. There was a specific higher salary attached to the post of Head of Primary Wing and which the petitioner in that case was getting for over 15 years for working on that post. The petitioner was thereafter sought to be removed from the post of the Head of the Primary Wing to which she was appointed by making her as the Activity Coordinator (Co-Curricular) by the management of the school. Since in that case the petitioner Mrs. Paramjit Gill was specifically recruited to the post and had functioned for 15 years in the substantive capacity before the order impugned in that case was passed, it was therefore held by a learned Single Judge of this Court that the action of the

management of the school amounts to demoting and degrading her from the legitimate status to which she was appointed and entitled to and hence the learned Single Judge in ***Paramjit Gill's*** case (supra) rejected the argument of the management to protect the pay while changing the post on the ground that actually there was a demotion and loss of status even if the pay is undertaken to be protected. Learned Single Judge has rightly observed that it is not only the issue of lesser pay which has to be seen, but also if a person is assigned duties of a lower post which could be a feeder grade to the post which a person was already holding and was being demoted from, and thus in such circumstances, removal of a person from a post will actually amount to loss of status and demotion even if the monetary emoluments are protected. Learned Single Judge gave an example of a principal of a school being asked to perform the duties of a PGT even if the emoluments of a principal are protected as a loss of rank because there does take place a loss of rank on being asked from a principal to work as a PGT instead of a Principal, and therefore, it was observed by learned Single Judge that asking an officer to work on a lower post would reduce that person's status in a society and therefore, the action of the management was actionable.

9. On behalf of the petitioner, reliance is placed upon other judgments including the judgment of the Supreme Court in the case of ***Sub-Inspector Rooplal and Anr. Vs. Lt. Governor Through Chief Secretary, Delhi & Ors (2000) 1 SCC 644*** which holds that merely because there is no lowering of pay-scale, it would not mean that there cannot be demotion or loss of rank. I need not refer to this judgment in detail as the observations given in the para above distinguishes the judgment of the Supreme Court than the facts of the present case. This Supreme Court judgment was in fact relied upon by the learned Single Judge in ***Paramjit Gill's (supra)*** case.

10. I may note that a Division Bench of three Judges of the Supreme Court in the judgment of ***K. Gopaul Vs. The Union of India & Ors AIR 1967 SC 1864*** has held that merely because a person is removed from the designation of a Head of the Department will not mean that action of the department can be challenged, inasmuch as, there has to be lowering of pay/emoluments before it can be held that a person has been

reduced in rank. Para 5 of the said judgment is relevant and the same reads as under:

“(5) On behalf of the appellant, these Orders of the Government have been challenged on three grounds. The first ground urged is that, by transferring the appellant and posting him as Accommodation Controller, he has been reduced in rank and this reduction in rank was ordered without complying with the provisions of Art. 311 of the Constitution. This submission is based on the circumstance that, according to Entry 13 in Appendix II which is referred to in subsidiary definition(ii) of R.9 of Part I of the Fundamental Rules of the Madras Government, the I.G.R. has been declared to be the Head of a Department while the Accommodation Controller is not the Head of Department. We cannot accept the submission that the mere fact that the post of Accommodation Controller, to which the appellant has been transferred, has not been designated as the post of a Head of the Department necessarily involves any reduction in rank. In fact, it is well-known that in Government service, there may be senior posts, the holders of which are not declared as Heads of Department, while persons holding comparatively Junior posts may be declared as such. **The rank in Government service does not depend on the mere circumstance that the Government servant, in the discharge of his duties, is given certain powers.** In the case of the appellant, it is to be noticed that, from very initial stage, it was laid down that, on being transferred to the post of the Accommodation Controller, he was still to continue to draw pay in the scale in Rupees 1,200-100/2-1,400 which the scale in which he was drawing his pay while working in the post of I.G.R..... .”

11. When we refer to the aforesaid ratio of the Supreme Court in the case of *K. Gopaul (supra)*, it becomes clear that there is no reduction in rank merely because in the discharge of his earlier duties a Government servant is given certain powers, and the Supreme Court has made it clear that unless there is reduction in pay by change of pay scale there is no reduction in rank for the same to be actionable. The Supreme Court has further made it clear that merely because a person is removed from the post of ‘Head of Department’, does not necessarily involve any reduction in rank.

.....

13. In view of the above, petitioner has not suffered loss of monetary emoluments. Petitioner has also not suffered any loss of rank or post because there is no specific post with specific pay-scale of a Primary Wing Coordinator inasmuch as, duties of a Primary Wing Coordinator are only additional duties conferred upon a primary teacher. As per *K. Gopaul's case (supra)* mere loss of power by change of post will not result in loss of rank or status. As already stated above, once appointment of the petitioner is only as a primary teacher, and is not against a so called post of a Primary Wing Coordinator, the petitioner thus cannot claim any loss of status or rank and the respondent no.3 is justified in making the post as rotational so that the necessary experience is gained by different persons and personal growth of teachers is possible. It is also important to note that it is not as if the petitioner is being targeted inasmuch as the Managing Committee has fixed a fixed tenure for various posts, including the Primary Wing Coordinator and, another person Ms. Archana Verma, who was an employee of a school working as a Middle School Coordinator completes her turn of three years in March, 2013 and who also has to relinquish charge in April, 2013. This has been done by the same meeting dated 2.5.2012 which is impugned by the petitioner.”

6. In the present case, the order dated 4.2.2013 gives specific reasons including the reason that there is no substantive position of a Head of Department and removal of a person from the Head of Department is not a demotion as the service conditions are not affected. Also, and admittedly, the appointment of petitioner was for three years or “till further orders”. I cannot agree with the contention urged on behalf of the petitioner that the impugned order dated 4.2.2013 is a non-speaking order. Considering the nature of the order which was required to be passed, in my opinion, there are sufficient

reasons given in the impugned order dated 4.2.2013 for removal of the petitioner from the post of HoD. In any case, if we strictly apply the ratio of ***K. Gopaul (supra)*** case of the Supreme Court, the removal of a person from the post of Head of Department is justiciable inasmuch as the same does not involve any reduction of status or rank or loss of pay.

7. I may note that the argument on behalf of the petitioner that the rules do not provide for appointment “till further orders” and therefore appointment should be of fixed three years is a misconceived argument because and in fact it was for the petitioner to show that rules barred appointment “till further orders”. Once there is no bar in the rules, appointment of a person can always be for a particular period or till further orders.

8. So far as the aspect of challenge to the show-cause notice is concerned, in my opinion, enquiry proceedings cannot be scuttled by alleging malafides. There are only limited grounds when enquiry proceedings can be stopped at the outset, and which would be those grounds which would go to the root of the matter like jurisdiction of initiation of the departmental proceedings. Such lack of jurisdiction can be with respect to lack of authority in the person initiating enquiry or there being earlier enquiry holding that the charges are not proved or such other issues of lack of jurisdiction. General issues of malafides or other issues on merits being defences in facts and law

to challenge the articles of charges, are not grounds on which a writ petition can be filed for quashing of the departmental enquiry inasmuch as such grounds have to be only taken as defences in the departmental proceedings.

9. Accordingly, there are no grounds to entertain this writ petition, which is without any merit, and is therefore dismissed leaving the parties to bear their own costs.

10. Petitioner is given liberty to raise all grounds which he thinks are available to the petitioner in facts and law in the departmental proceedings.

VALMIKI J. MEHTA, J

MARCH 19, 2013
ak