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

+ **W.P.(C) 6994/2016**

DEEPAK KEM

..... Petitioner

Through: Mr. Kirti Uppal, Sr. Adv. with Mr. Arjun
Mitra, Ms. Wamika Trehan, Mr. Siddharth
Chopra, Ms. Namisha Gupta and Ms. Jaskaran
Kaur, Advs.

versus

JAMIA MILLIA ISLAMIA

..... Respondent

Through: Mr. Alamgir, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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10.08.2016

CM No. 28729/2016 (Exemption)

1. Allowed subject to all just exceptions.

WP(C) 6994/2016

2. This petition seeks the following reliefs:

“..... a. Issue a writ in the nature of Certiorari or any other appropriate writ calling for the records of the Respondent and setting aside the Executive Council Resolution No. EC-2015 (III); Reso.-18 dated 27.11.2015, communicated to the Petitioner vide letter dated 05.01.2016;

b. Issue a writ of Mandamus or any other appropriate writ directing the Respondent to reconsider the Representation/Application of review dated 05.11.2014, 09.03.2015 and 16.10.2015, filed by the Petitioner on merits of the case without being influenced by the judgment of this Hon'ble Court dated 10.04.2012. passed in LPA No. 92 of 2012;...”

3. It is the petitioner case that he filed a review application apropos his dismissal from employment with the Jamia Milia Islamia University (for short the University) in view of the amendment to Statute 37 of the Jamia Milia Islamia Act, 1988 vide resolution EC-2014 (I): Reso.-03 dated 03.03.2014, which reads as under:

"The removal of a teacher or a member of the academic staff shall require a two-third majority of the members of the MaJlis-i-Muntazimah (Executive Council) present and voting. Provided that the teacher or the member of the academic staff may prefer a review against the penalty of removal from service, which may be considered by the Majlis-i-Muntazimah Executive Council)."

4. The petitioner has been removed from his employment with the University where he was working as Associate Professor in the Centre for Culture, Media and Governance, Jamia Millia Islamia, by an order dated 13.06.2011 on charges of intellectual plagiarism and bringing disrepute to the University. After an inquiry, the petitioner was found guilty of serious misconduct and as a corollary removed from service.

5. The petitioner challenged his removal from service by way of WP(C) No. 4918/2011 in this Court. The writ petition was dismissed on 16.09.2011. The petitioner preferred an appeal viz. LPA No. 92/2012. By order dated 10.04.2012 the Division Bench affirmed the order of the learned Single Judge. It observed, inter alia, :

“..... 11. In this case, it would not be correct to say that the disciplinary authority disagreed with the EO; on the contrary, the record reveals that the first charge, i.e of plagiarism, was concededly established. It was on the second charge, i.e of the Appellant having brought the University to disrepute, that the EO

felt that there was insufficient material to support a charge. Now, this can be a matter of perception. Saliently, the appellant did not attempt to attack the finding about his having plagiarised - a serious charge on anyone, and more so for an academic, who aspires to be a role model to students. It can arguably be said that once such a grave charge is established, the disrepute is self evident, if the deceit is known even to a few outside the University circles. Nevertheless, the EC took care to give an opportunity to the Appellant regarding its proposal to remove him. He replied to the show cause notice. The court does not therefore, find any illegality in the procedure adopted. That apart, even if the appellant's argument is accepted for a moment, there is no dispute that the first charge - plagiarism, was held to have been proved, by the EO. That charge was sufficiently grave as to warrant the penalty which Jamia chose to impose on the Appellant. As Mark Twain said of plagiarism:

"Nothing is ours but our language, our phrasing. If a man takes that from me (knowingly, purposely) he is a thief "

The undeniable fact-found by the EO, and which the learned Single Judge satisfied himself to be factually correct - was the deceit practised by the Appellant in attempting to pass off others' labours as his own. Such conduct anywhere, and especially from position he held in Jamia, rendered it inexcusable; the only penalty was removal from service.

.....

13. In view of the conclusions recorded above, this Court is satisfied that the Appeal lacks in merit; it is accordingly dismissed, without any order on costs.....”

6. After about 52 months from the date of his removal from service and 30 months from the date of dismissal of the LPA the petitioner filed a review application before the University by way of representation on the basis of the aforesaid amendment to Statute 37. It was considered by the University and rejected by following order:

“..... Consideration of request dated .16.10.2015 of Dr. Deepak Kem (ex- Associate Professor, Centre for Culture. Media and Governance, JMI) against his removal from Jamia’s services.

The Majlis (EC) considered the request of Dr. Deepak Kern dated 16.10.2015 against his "removal from services" along with the entire records of the disciplinary proceedings and Hon'ble High Court's Orders in its judgments dated 16.09.2011 and 10.04.2012 in the case of Dr. Deepak Kem Vs. Jamia Millia Islamia & Ors., wherein the Hon'ble Court, while finally disposing of the appeal, held that plagiarism anywhere, and especially from position he held in Jamia, rendered it inexcusable; the only penalty was removal from services (Annexure-XVII).

The Majlis (EC), after detailed deliberations, was of the opinion that, as aptly observed by the Hon'ble High Court, intellectual plagiarism is a serious misconduct in an institution of higher education, and no laxity can be granted in such cases...”

7. On the face of it, the aforesaid amendment in Statute 37 does not make it applicable retrospectively. In any case, this court has already dismissed the petitioner’s writ petition, and an appeal filed against that order, affirming his dismissal from service from the University on account of intellectual plagiarism and bringing disrepute to the University. The order in the LPA is unassailed and has become final.

8. Mr Kirti Uppal, learned Senior Advocate submits that in similar other cases concerning intellectual plagiarism, the University has reviewed dismissals pursuant to the aforesaid statute. However, he is unable to assist the Court with respect to the nature of those cases or whether those cases pertain to the period subsequent to the amended statute. Therefore, his submissions are unsubstantiated. The petitioner has not shown how any

statutory right has been violated for redressal of the same, in a writ petition under Article 226 of the Constitution.

9. Consequently, there is no occasion to interfere with the impugned resolution of the University. The writ petition is without basis and is not maintainable. Hence it is dismissed.

NAJMI WAZIRI, J

AUGUST 10, 2016^{/kk}