

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

+ **W.P.(C) No.2019/2003**

% **14th March, 2017**

MS. YASMEEN PRAVEEN Petitioner

Through: Mr. S.K. Rungta, Senior
Advocate with Mr. Prashant
Singh, Advocate.

versus

VICE CHANCELLOR JAMIA MILLIA ISLAMIA UNIVERSITY

AND ANR. Respondents

Through: Mr. Mohd. Shah Nawab Hasan,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Petitioner by means of this writ petition under Article 226 of the Constitution of India, seeks the relief of quashing of the decision dated 20.12.2002 of the executive council of the respondent no.1/Jamia Millia Islamia University whereby the pay-scale of the petitioner has been downgraded. This impugned order being the decision of the executive council dated 20.12.2002 reads as under:-

“E.C. dt.20.12.2002

Resolution No.UV:

E.C. decision of down-gradation of pay scale of the post of Director, Balak Mata Centre (J.M.I.) from Rs.2200-4000 to Rs.1640-2900) pre-re-revised.

The Majlis (E.C.) noted its earlier Resolution VII dated 14.6.2002, recommendations of Majlis-I-Maliyat (F.C.) held on 12.6.2002,

23.10.2002 as also proceedings in the High Court of Delhi. Following due consideration on all earlier decisions, papers/documents and representation dated 13.7.2002 submitted by the individual concerned, the Majlis (E.C.) finally resolved to stick on its earlier decisions with the directions to follow proper procedure for implementing the decision. (Action: Finance Officer/Dy. Registrar (Schools).”

2. Petitioner was appointed as a Director of Balak Mata Centre of the respondent no.1 in terms of the advertisement dated 25.6.1998. The advertisement dated 25.6.1998 prescribed the pay-scale of the post of Director, Balak Mata Centre as Rs.2200-4000/- (pre-revised). Respondent no.1 being a centrally funded university, UGC wrote its letter dated 15.4.2002 to the respondent no.1 that pay-scale given to the petitioner in the post of Director, Balak Mata Centre was not correct/justified and this pay-scale should be downgraded to the pay-scale of Rs.1640-2900/- (pre-revised). Accordingly, the respondent no.1 has passed the impugned executive council’s decision dated 20.12.2002.

3. Petitioner had earlier filed two writ petitions questioning the decision of the respondent no.1 to downgrade the petitioner’s pay-scale and these writ petitions being CWP Nos. 2957/2002 and 4585/2002 were disposed of in terms of the following orders dated 1.7.2002 and 31.7.2002 respectively:-

“Order dated 1.7.02
C.W. 2957/02

Ld. Counsel for the respondent submits that in case the petitioner's pay scale is to be reduced, due intimation will be sent to the petitioner and adequate opportunity will be given to petitioner to represent her case before any decision is taken on the same.

The aforesaid statement of the learned counsel for the respondent is taken on record.

In view of the aforesaid statement, learned counsel for the petitioner does not press the petition and the writ petition is disposed of accordingly.

C.M. 6721/02

Dismissed as not pressed.

Order dated 31.7.2002

C.W. 4585/2002

Notice to respondents to show cause as to why rule nisi be not issued.

Mr. Sawhney accepts notice on behalf of the respondents.

This petition can be disposed of at this stage. Dr. Surat Singh has contended that down-grading of the pay scale of the petitioner is not permissible. He has contended that the petitioner was appointed on 11.2.1999 and her appointment was approved pursuant to the letter-dated 12.2.1999 by the Vice Chancellor on 20.12.2000.

I have perused the letter dated 9.7.2002 (which is at page 18 of the paper-book). The letter inter alia states that directive was received from University Grants Commission to down grade the pay-scale w.e.f. the date of its up-gradation.

As question involved in this writ petition is with regard to the applicability of the pay-scale, down-grading the same retrospectively in view of the directive of the UGC, is not sustainable in eyes of law in view of the decision of the Supreme Court that by an administrative order it could not take away the right of the petitioner who was appointed in terms of the advertisement of the respondent and selected in a regular manner on 11.2.1999 and the Vice Chancellor approved the said appointment in terms of rules and regulations of the respondent on 22.12.2000. In view of the letter of the UGC, the decision of the UGC cannot be implemented retrospectively.

With these observations writ petition stands disposed of.”

4. On behalf of the petitioner, it is argued that the order dated 31.7.2002 binds the respondent no.1 and as per this order dated 31.7.2002 in the CWP No. 4585/2002, the letter of the UGC cannot be implemented retrospectively to deny the pay-scale of Rs.2200-4000 to the petitioner. Respondent no.1 has filed its counter affidavit accepting

the factum of the earlier orders passed in the earlier writ petitions but it has been stated that the UGC has specifically asked the respondent no.1 to downgrade the pay-scale to Rs.1640-2900/-.

5. The relevant paras of the counter affidavit are paras 1 to 4 of the brief facts and which paras read as under:-

“1.The Petitioner was appointed against the post of Director, Balak Mata Centre of the Respondent University in the pay-scale of Rs.8,000-275-13,500 (unrevised Rs.2200-4000) wef 12.2.2009. It is pertinent to mention that upgradation of the said post of the Director from Rs.1640-2200 to Rs.2200-4000 was neither initially approved by the Executive Council nor endorsed by the Finance Committee.

2.The University Grants Commission vide a letter dated 15.4.2002 (bearing No.F.31-24/98 [CU] {Annexure R-I herewith} informed the Ministry of Human Resources Development (with a copy marked to the Registrar and the Finance Officer respectively of the Respondent University) to the following effect:-

- a) The upgraded pay-scale given to the Director, Balak Mata Centre (Petitioner herein) is not justified.
- b) The post of Director, Balak Mata Centre should be re-designated as P.G.T and the scale should be reverted back to Rs.1640-2900 (pre-revised).
- c) If the University does not revert back the post of Director to Rs.1640-2900, the post shall be treated as unapproved and the expenditure of the post shall be borne by the University Grants Commission.

3.The matter was placed before the Finance Committee of the Respondent University on 12.6.2002 and following due deliberation it was decided that the pay scale of the post of Director may be down-graded to the original scale of pay i.e Rs.1640-2900/-

(True Copy of Item No.3 of the Minutes of the Finance Committee Meeting held on 12.6.2002 is annexed herewith as Annexure R-II)

3A.The Executive Council which is the principal executive body of the Respondent University vide a Resolution No.VIII in its Meeting held on 14.6.2002 also resolved to down-grade the scale of Director, Balak Mata Centre from Rs.2200-4000 to Rs.1640-2900.

(True Copy of the Resolution No.VIII of the Executive Council Meeting held on 14.6.2002 is annexed herewith as Annexure R-III.)

4.It is also relevant to mention that the Hon'ble President of India (in his capacity as the Visitor of the Respondent University) through the Ministry of Human Resource Development encapsulated in letter bearing No.F.16-14/2001-Desk (U) dated 27.6.2002 issued Notice of annulment

under Section 8(8) of the Jamia Millia Islamia Act, 1988 as to why the appointment of the Director, Balak Mata Centre may not be annuled. A reminder to the Respondent University was issued vide letter dated 24.7.2002 by the Ministry of Human Resource Development for responding to the said Notice of annulment. The Respondent University assured the Ministry of Human Resources Development that the initiation of the procedure for withdrawing the enhanced scale of Rs.2200-4000 was underway.”

6. Admittedly the respondent no.1 is the centrally funded university and grants are received by the respondent no.1 for the amounts payable as monetary emoluments to the teachers of the respondent no.1 from the UGC. Therefore unless the post is sanctioned by the UGC, and that too at a particular pay-scale, petitioner cannot get such a pay-scale with the direction that UGC will release funds for such pay-scale to the respondent no.1.

7. (i) The issue in this writ petition can be broken up for two periods. The first period being the period from the date of original appointment of the petitioner on 12.2.1999 and till the order dated 31.7.2002 was passed in earlier CWP No. 4585/2002. The second period will be the period after 31.7.2002. I would also like to observe that even so far as the first period is concerned, the issue will be in two parts i.e whether the liability is of the respondent no.1 or both of the respondent no.1 and the UGC.

(ii) Admittedly, UGC was not a party to the earlier CWPs Nos. 2957/2002 and 4585/2002. A decision in a case is binding against a

party only if that entity is a party to such judicial proceedings. UGC admittedly not being a party to earlier CWP Nos. 2957/2002 and 4585/2002, hence any orders passed in those CWPs including the order dated 31.7.2002 in CWP No.4585/2002 will only bind the respondent no.1 and not the UGC. Therefore even applying the principles of *res judicata* as argued by the petitioners, it is only the respondent no.1 (and not UGC) who out of its own funds will be liable to pay the pay-scale of Rs.2200-4000/- to the petitioner from the date of her appointment and till the order dated 31.7.2002 was passed in CWP No. 4585/2002. It is again reiterated that the monetary liability will not be of the UGC but will only be of the respondent no.1 for the period up to 31.7.2002.

8. On the issue with respect to liability of the respondent no.1 after 31.7.2002, it is seen that as per the counter affidavit, pay-scale which was sated in terms of advertisement dated 25.6.1998 of a Director, Balak Mata Centre to be Rs.2200-4000/- was without the approval of the executive council and the finance committee of the respondent no.1. No doubt, in the advertisement if a particular pay-scale is given, ordinarily the figure of pay-scale will bind the employer, however, in my opinion this Court cannot grant such pay-scale of Rs.2200-4000/- to the petitioner even against the respondent no.1 after

31.7.2002 because effectively otherwise it will amount to perpetrating gross injustice upon the respondent no.1, inasmuch as, directing payment of pay-scale of Rs.2200-4000 would be a position that without the sanction of the competent/necessary authority, and simply because an advertisement is issued, respondent no.1 will be out of pocket of lakhs of rupees although there is no requisite decision of the executive council and the finance committee of the respondent no.1 and only by such decision can such a higher pay-scale be paid, and which is wrongly mentioned in the advertisement. Therefore even qua the respondent no.1 no pay-scale of Rs.2200-4000/- can be granted to the petitioner after 31.7.2002, and after 31.7.2002 petitioner will be paid by the respondent no.1 during her services the pay-scale of Rs.1640-2900/-. At the cost of repetition, I may clarify that so far as UGC is concerned, it is not liable for the period upto 31.7.2002 when the order was passed in earlier CWP No.4585/2002 and even thereafter by reiterating that orders in judicial proceedings cannot bind an entity unless such entity is a party to such judicial proceedings.

9. I may note another serious aspect that petitioner has once again even in this writ petition not impleaded the UGC. Once petitioner has not impleaded the UGC, and petitioner is aware of the letters dated 15.4.2002 and 12.6.2002 of the UGC directing respondent

no.1 not to grant the higher pay-scale of Rs.2200-4000/- to the petitioner, such letters therefore are final in the absence of any successful challenge to the same, and accordingly since the said letters of UGC dated 15.4.2002 and 12.6.2002 have to prevail, hence the respondent no.1 will be justified in not paying the pay-scale of Rs.2200-4000/- to the petitioner after 31.7.2002, more so in the absence of necessary sanction for such pay-scale by the executive council and the finance committee of the respondent no.1.

10. In view of the above, this writ petition is disposed of by directing payment of pay-scale to the petitioner of Rs.2200-4000/- by the respondent no.1 only from the date of appointment of the petitioner till 31.7.2002. After 31.7.2002 neither the respondent no.1 nor UGC will be liable to give such higher pay-scale to the petitioner of Rs.2200-4000/-. Writ petition is disposed of accordingly, leaving the parties to bear their own costs.

MARCH 14, 2017
Ne

VALMIKI J. MEHTA, J