

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

+ **W.P.(C) No.5643/2015**

% **17th March, 2017**

B. DIWAKER Petitioner

Through: Mohd. Zaryab Jamal Rizvi,
Advocate with Mrs. Firdouse Q.
Wani, Advocate.

Versus

JAMIA MILLIA ISLAMIA UNIVERSITY Respondent

Through: Dr. Amit George, Advocate.

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 under Article 226 of the Constitution of India is filed by the petitioner seeking the relief of restraining the respondent/employer/Jamia Millia Islamia University from recovering an amount of Rs.23,69,016/- from the petitioner, and which amount was sought to be recovered by the respondent on account of the emoluments paid to the petitioner in the study leave period of two years.

2. On the very first date of hearing when this writ petition came up for admission and for consideration of grant of interim orders,

a detailed order, encompassing the relevant issues which arose, was passed on 28.5.2015, giving partial interim relief to the petitioner, and which order reads as under:-

“C.M. Nos.10160-61/2015 (exemption)

1. Exemption allowed subject to just exceptions.
C.M.s stand disposed of.

+ W.P.(C) No.5643/2015 and C.M. No.10159/2015 (stay)

2. By this petition, petitioner who is a Professor with the respondent/University, seeks the relief that the respondent/University should not make deductions from any monetary emoluments to be paid to the petitioner; whether salary payments or terminal benefits; allegedly on the ground that petitioner had not completed his Ph.D within the specified period of study leave granted to the petitioner by the respondent/University. In sum and substance, petitioner claims that the petitioner not only completed the PH.D. thesis for which study leave was granted within the allowable period and extension thereof and the petitioner after the original period of two years of study leave i.e in the extended period after the two years had only performed his duties as a Professor with the respondent/University. Petitioner also relies upon the order dated 3.12.2013 passed by the learned Single Judge of this Court in W.P.(C) No.7463/2013 filed by the petitioner and which order according to the petitioner gives finality with respect to the acceptance of the Ph.D thesis of the petitioner by the respondent/University. This order reads as under:-

“

Order

03.12.2013

Heard. Admittedly, the thesis when submitted by the petitioner on 04.09.2013, which was the last date for its submission, was complete in all respects except that it was not signed by the co-supervisor who was based in Pune at that time. In these circumstances, the University is directed to accept the thesis, which the petitioner has already re-submitted after signature of the co-supervisor.

The writ petition and the application stand disposed of.

There shall be no order as to costs.

DECEMBER 03, 2013

V.K. JAIN, J

.....”

3. Learned senior counsel for the respondent/University sought to contend that there is a difference between the period of study leave for which emoluments would be payable and for the extended period for which emoluments would not be payable, and for which purpose reliance is sought to be placed by the learned Senior counsel on para 13(xvi) of Administrative Ordinance issued by the respondent/University, however, *prima facie* this Court does not find any substance in the provision relied upon by the respondent/University for denying payment of monetary emoluments to the petitioner, and who during the extended period after the original period of

two years of special leave did perform his duties as a Professor with the respondent/University.

4. In view of the arguments urged on behalf of the petitioner, and considering that petitioner is superannuating on 30.6.2015, it is ordered that the respondent/University will not make recovery of a total amount more than 50% of the total amount of Rs.23,69,016/- claimed by the respondent/University. So far as the balance/remaining 50% amount of Rs.23,69,016/- is concerned, the respondent/University will put this amount in a fixed deposit in the name of the petitioner so as to earn maximum rate of interest.

5. Interim order passed today would operate till disposal of the interim application or the writ petition, as the case may be, whichever is decided earlier, and at which stage, the Court will pass appropriate orders whether for release of even the balance 50% amount in favour of the petitioner which by this order is to be put in a fixed deposit by the respondent/University or if there is entitlement of the respondent/University to make the whole or part of recovery from the petitioner of the amount of Rs.23,69,016/-.

6. Notice.

7. Counsel for the respondent accepts notice.

8. Counter affidavit be filed within six weeks. Rejoinder affidavit thereto be filed within four weeks thereafter.

9. List before the Registrar for completion of pleadings on 26th August, 2015.”

3. A reading of the pleadings of the parties show that the following aspects are indubitable:-

(i) Petitioner no doubt did not complete the Ph.D study within the original study leave period of two years, yet, petitioner got requisite extension for submitting Ph.D thesis to the respondent/University in terms of the relevant ordinances, and in fact the petitioner succeeded in his W.P. (C) No.7463/2013 by which the respondent/University was directed to accept the Ph.D thesis of the petitioner by giving extension. This order dated 3.12.2013 is final as the respondent/University did not challenge the same. There therefore does not arise any issue of the fact

that the Ph.D thesis of the petitioner has not been validly completed within the valid extension of the prescribed period.

(ii) During the period after the period of the two years study leave period i.e the extended period of study leave, the petitioner in fact did teach as a Professor in the respondent/University. Therefore the present is not a case where petitioner is unfairly seeking to draw the benefit of the monetary emoluments paid in original leave period as he has in spirit complied with the principle of non-teaching only for two years, inasmuch as, after the expiry of the original study leave period of two years the petitioner in fact taught and performed his duties as a Professor with the respondent/University.

(iii) The reliance by the respondent/University upon para 13(xvi) of the Administrative Ordinance to deny the petitioner monetary emoluments during the original period of two years of study leave merely because petitioner did not complete his Ph.D thesis within the original study leave period of two years is misconceived as neither in this para 13(xvi) nor in the earlier para 13(x) it is provided that monetary emoluments which are payable during the original study leave period shall be forfeited although the person in fact teaches immediately after the original study leave period of two years ends. Once there is no categorical clause of forfeiture of the monetary

emoluments payable during the original study leave period of two years in spite of petitioner not sitting idle after two years, then forfeiture by respondent/University cannot be presumed to be legal only because a Bond was executed by the petitioner which provides that the petitioner after the study leave period will teach and perform his duties with the respondent/University because it is nowhere provided in the Bond or Administrative Ordinance of the respondent/University that teaching if done after the two years study leave period will not be valid teaching in the absence of the Ph.D qualification. Within the period of study leave as mentioned in the sub-para (a) of para 13 (xvi) will have to be interpreted to include to mean with the valid period of study leave i.e up to the validly extended study leave period.

(iv) The aspect of forfeiture as per the language of para 13(xvi) which is relied upon by the respondent/University cannot be interpreted to mean that a person who after the original study leave period of two years starts teaching in the respondent/University immediately after the study leave period of two years even then the monetary emoluments in the study leave period of two years are to be forfeited, because, the object of para 13(xvi) is only to prevent grant of monetary emoluments in the study leave period of two years to those

persons who after the original study leave period do not re-join the respondent/University and perform their duties of teaching in the respondent/University. The different sub-paras of para 13(xvi) of the Administrative Ordinance of the respondent/University have to be read in a holistic and purposive manner whereby the object should be that a person who is on study leave for Ph.D thesis would be entitled to monetary emoluments during the period of study leave without teaching, provided of course such person immediately after completion of original study leave period has joined the respondent/University and performs his duties of teaching and has also within the allowable period completed his Ph.D qualification.

(v) I may note that the language of the Bond executed by the petitioner dated 20.3.2008 uses more or less the same language as contained in the Academic Ordinance 13(xvi), and therefore, such clause of the Bond has necessarily to be read with the intent and purpose of para 13(xvi) of the Academic Ordinance of the respondent/University and which only has the intention to ensure that a person who proceeds on study leave of two years must necessarily re-join after the period of two years so that the University does not lose the teaching duties which have to be performed by a person who was

on study leave for a period of two years with the fact that the Ph.D qualification must be completed in the permissible period.

4. I am forced to comment that respondent/University has taken up a strident and unnecessarily confrontationist attitude with respect to its own teacher who has in fact performed the duties after the original study leave period of two years and also duly obtained the Ph.D qualification. I did put it to the counsel for the respondent that if the object of the Bond clause and the para 13(xvi) of the Academic Ordinance is two-fold of firstly Ph.D being completed either within the original period or the extended period which is permissible (and which has been done by the petitioner), and secondly that the employee/teacher performs his duty of teaching after the original study leave period of two years, then both the necessary heads of completion of Ph.D thesis and teaching after two years having been complied with by the petitioner, petitioner should not be deprived the monetary emoluments of the study leave period of two years, but however the respondent/University seems not to have been correctly advised and hence is taking up unnecessary attitude of frivolously defending this petition.

5. In view of the above discussion, this writ petition is allowed. Respondent/University is restrained from making any

recoveries from the petitioner towards the amount which the petitioner was paid as monetary emoluments during the study leave period of two years. It is noted that petitioner has already received 50% of the amounts from the respondent/University pursuant to the interim order of this Court dated 28.5.2015 and now since the balance amount which has been recovered by the respondent/University would become payable to the petitioner, and with respect to which the order dated 28.5.2015 directed that this balance amount of 50% should be kept in a fixed deposit by the respondent/University, accordingly, this balance amount of 50% along with accrued interest thereon because of the same having been put in a fixed deposit, be paid to the petitioner within a period of two weeks from today.

6. In view of the typical facts of the present case of the respondent/University unnecessarily causing this litigation not only to emanate but also being contested unnecessarily, this writ petition is allowed with costs of Rs.50,000/-, and which costs shall also be paid by the Respondent/University to the petitioner along with the balance payment of 50%. Petition is allowed and disposed of accordingly in terms of aforesaid observations.

MARCH 17, 2017/ Ne

VALMIKI J. MEHTA, J