

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

Date of decision: 26th October, 2017

+ W.P.(C) 5846/2017 & C.M. 24420-21/2017

FAQEER MOHAMMAD Petitioner

Through: Mr. Chandra Shekhar,
Mr. Prashant Shekhar & Mr. Asif Ali Sidiqui,
Advocates

Versus

JAMIA MILLIA ISLAMIA AND ANR. Respondents

Through: Dr. Amit George & Mr. Swaroop
George, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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(ORAL)

1. Change of date of joining is the subject matter of this petition. Petitioner has retired as Associate Professor on 31st December, 2016. An offer of appointment was made to petitioner to join respondent-University as Lecturer, Chemistry on 16th December, 2003 and on 23rd December, 2003, a formal letter of appointment was issued to him and petitioner had submitted his acceptance through proper channel on 24th December, 2003. Since there were winter vacations in the respondent-University,

therefore, petitioner had joined his duties on 6th January, 2004. It is evident from petitioner's letter of correspondence of 24th December, 2003 that after accepting the appointment, petitioner had stated he will join on 6th January, 2004.

2. Petitioner had made a Representation for the first time on 25th September, 2006 (*Annexure P-18*) to consider his joining on 24th December, 2003 instead of 6th January, 2004. The said Representation was declined by respondent-University on 12th October, 2006 (*Annexure P-19*) stating that change in the date of joining is not permissible, as petitioner had joined on the re-opening after winter break in the year 2004. The second Representation was made by petitioner on 15th May, 2007 seeking correction of date of joining and thereafter numerous reminders were sent by petitioner and it is so evident from the 16th Reminder of 22nd May, 2009.

3. In response to petitioner's reminder of 30th May, 2007, respondent-University informed that as a matter of policy, fresh teachers are not allowed to join duties during vacations and this policy matter was adhered to, on verbal directions of the then Vice Chancellor of respondent-University. Petitioner's Representation for correction of date of joining was then considered by the Establishment Committee and was approved by the Executive Council vide Resolution (*Annexure P-33*) on 15th October, 2009. However, the Executive Council recommended that a clear cut policy needs to be framed and implemented and in such like matters, problems do arise due to inconsistent decision regarding joining date of different persons at different time. The aforesaid Executive Council's decision was conveyed to petitioner in October, 2009 itself.

4. Petitioner made another Representation (*Annexure P-34*) on 25th March, 2010 for redressal of his grievance regarding correction of his date of joining in the light of policy so framed in pursuance to the mandate of Executive Council. According to petitioner, the said Representation (*Annexure P-34*) was not responded to. Thereafter, for sympathetic consideration of his grievance, petitioner made another Representation(*Annexure P-35*) to the Vice Chancellor of respondent-University to correct his date of joining. The respondent- University vide Communication of 16th April, 2012 (*Annexure P-36*), rejected petitioner's prayer for correction in the date of joining.

5. Again on 26th June, 2014, petitioner had made another Representation (*Annexure P-37*) to the Vice Chancellor of respondent-University seeking operationalization of EC Resolution of 15th October, 2009 for framing of policy regarding the date of joining. The respondent-University's Establishment Committee in its meeting on 17th October, 2014 again considered and rejected petitioner's Representation (*Annexure P-37*) for correction in the date of joining by simply stating that petitioner's request cannot be acceded to. It is pointed out by petitioner's counsel that the Establishment Committee's recommendation (*Annexure P-38*) is silent about formulation of policy regarding the date of joining. The above recommendation of respondent-University's Establishment Committee was put up before the Executive Council, who had approved the recommendation (*Annexure P-39*) of the Establishment Committee on 27th November, 2015.

6. It is a matter of record that petitioner had filed a writ petition in the year 2016, which was withdrawn by him with liberty to file fresh one, as

it had lacked material particulars. Instant writ petition has been filed in the year 2017, to which strong opposition by learned counsel for respondents is on the ground that this petition is hit by delay and latches, as by making successive representations, petitioner cannot put forward a stale claim and in the instant case, from the year 2009 till 2016, there is unexplained delay of seven years. Reliance is placed by respondent-University's counsel upon Supreme Court's decision in *State of Uttaranchal & Anr. Vs. Shiv Charan Singh Bhandari & ors.* (2013) 12 SCC 179 to submit that stale claims ought not be belatedly entertained and so, dismissal of this writ petition is sought on delay and latches.

7. Learned counsel for petitioner maintains that there is no delay and latches in the instant case, as the Executive Council in its recommendation of 15th October, 2009 (*Annexure P-32*) had directed that a clear cut policy be framed and in the hope that it would be done, petitioner had made successive representations and so, the delay stands sufficiently explained. Petitioner's counsel further submits that till date, respondent-University has not put in place a clear cut policy pertaining to date of joining of newly appointed employees during vacations. Counsel for petitioner has drawn the attention of this Court to a list of faculty members (*Annexure P-17*) to show that a number of faculty members had joined the teaching faculty during vacations and so, petitioner cannot be discriminated. Counsel for petitioner, on instructions, also submits that petitioner does not wish to disturb the seniority list and is concerned about the retiral benefits only, as the date of joining is crucial in the instant case as new policy pertaining to Provident Fund etc., was put in place w.e.f. 1st January, 2004, which had reduced quantum of provident

fund. So, change of date of joining is sought by petitioner.

8. Upon hearing and on perusal of material on record and the decision cited, I find that it is not a case of unexplained delay in the sense that petitioner had been making successive representations, which were being duly considered by respondent-University from time to time and so, petitioner's case cannot be thrown out on the ground of delay and latches. Such a view is taken as respondents had themselves come to a conclusion that a clear cut policy is required to be framed regarding date of joining, which apparently has not been done till date. This is disputed by respondent-University's counsel. So far as the Supreme Court's decision in *Shiv Charan Singh Bhandari (Supra)* is concerned, I find that unexplained delay in the said case was of two decades whereas in the instant case, it is of few years and even during that period, petitioner had been making successive representations which were entertained and there is nothing on record that policy decision on this aspect had been taken. Thus, this petitioner is entertained while repelling the respondent's plea of delay and latches.

9. In the facts and circumstances of this case, it is deemed appropriate not to dwell upon the merits of the case and to relegate petitioner to make a fresh Representation to seek the relief of preponing the date of joining from January, 2004 to December, 2003. Let such a request be considered by the competent authority of respondents in light of *Annexure P-17*. In case respondent-University still decides not to grant relief of preponing petitioner's date of joining despite the fact that some of the teaching faculty members were allowed to join during vacations, then a speaking order be passed indicating as to why the relief sought cannot be granted.

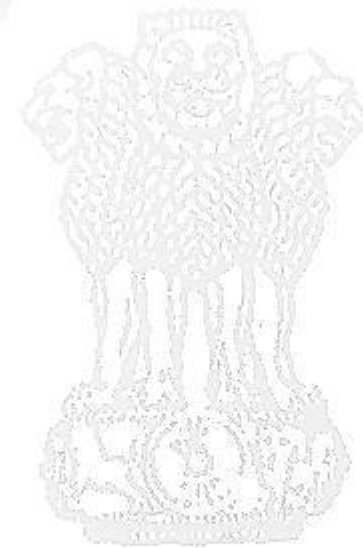
10. Petitioner's counsel submits that Representation would be made within four weeks. If it is so done, then respondent-University shall consider it within twelve weeks thereafter and pass a speaking order, while furnishing its copy to petitioner within two weeks thereafter, so that petitioner may avail of remedies available in law, if need be.

11. With aforesaid directions, this petition and applications are disposed of while making it clear that the case of petitioner would be considered only for retiral benefits and will not impinge upon the settled seniority.

(SUNIL GAUR)
JUDGE

OCTOBER 25, 2017

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