

\$~50

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

Reserved: 29th October, 2018

Pronounced on: 31st October, 2018

+ W.P.(C) 10550/2018 & CM APLL.41178/2018

DR. ABDUL SATTAR Petitioner

Through : Mr.Pratishtha Vij, Advocate.

versus

JAMIA MILLIA ISLAMIA Respondent

Through : Ms.Zeba Khair and Ms.Shivambika,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Through the present petition, the petitioner has challenged the order dated 28.05.2018 passed by the Registrar of respondent/Jamia Millia Islamia (Central University) whereby the representation of the petitioner has been dismissed by stating that the petitioner has to retire at the age of 60 years as per the rules and norms applicable to the post of Evaluator.

2. The brief facts of the case are that the petitioner was appointed to the post of Evaluator (Urdu) in the Urdu Correspondence Course-Centre for Distance and Open learning vide appointment letter dated 08.12.2004, on basic pay of INR 5500 per month in addition to the three advance increments in the pay scale of INR 5500-9000 plus usual allowances at the rates admissible under the rules to the employees of the respondent of the petitioner's category.

3. Learned counsel appearing on behalf of the petitioner submits that the appointment letter *inter alia* stated that the services of the

petitioner would be governed by the Jamia's Act, Statutes and Ordinances, as amended from time to time. The petitioner has been performing the work essentially of the academic or teaching nature, including but not limited to:

- (a) Evaluation of the assignments pertaining to the Course;
- (b) Aiding the students in teaching Urdu informally to the students;
- (c) Imparting of education and/or teaching students Elementary Urdu and Urdu Literature in the Centre for Distance and Open Learning of the respondent;
- (d) Invigilation.

4. Learned counsel further submits that the petitioner accepted the appointment letter dated 08.12.2004 vide his letter of acceptance dated 08.12.2004. Thereafter, Office Order dated 04.01.2006 was issued by the respondent approving the confirmation of services in respect of the petitioner w.e.f.08.12.2005. The petitioner made representation dated 22.04.2009 to the Vice Chancellor of the respondent requesting re-designation as a Lecturer in the Urdu Correspondence course at par with the Instructor, since he too was possessing the qualification of the Lecturer i.e. Masters' degree in Urdu and a holder of a Ph.D.

5. Learned counsel appearing on behalf of the petitioner has drawn the attention of this Court to the advertisement dated 26.06.2002 whereby there are three categories of posts i.e. (a) teaching posts (b) academic/teaching posts (c) non-teaching posts. Admittedly, the petitioner applied for the post of Evaluator (Urdu) in the grade of 5500-9000 recognized as an Academic/Teaching Post.

Thus, it establishes that the petitioner was not appointed in the category of non-teaching posts which are in the category of (c) of advertisement dated 25.06.2002.

6. Learned counsel for the petitioner has also drawn the attention of this Court to the Notification dated 09.11.2017 issued by the respondent whereby it was informed that the Executive Council in its meeting dated 27.09.2017 vide Resolution No.EC-2017 (IV) 3.32 has approved the amendment of Regulation XXXVII captioned ‘Age of Retirement of Staff’ in the light of UGC’s letter No.71-2/2017 (CU) dated 12.05.2017 regarding enhancement of age of superannuation of teachers from 62 to 65 years on the recommendation of the University’s Academic Council vide its meeting held on 12.09.2017 (Resolution No.AC-2017 (III). Learned counsel for the petitioner further drawn the attention of this Court to the attendance sheet Annexure P-24 (colly) wherein in the column of ‘Name of Teachers, the petitioner name is indicated and the petitioner had been taking classes of students and his time of session was 11.00 a.m. to 1.00 p.m.

7. Learned counsel further submits that the petitioner has been giving instructions to the students, teaching them regarding the elementary and academic in Urdu Literature and thus, he comes under the category of teachers and retirement age of 65 is applicable upon him.

8. In addition to that, the learned counsel has drawn the attention of this Court to the Counselling Schedule of BA General (Distance Mode), Part-1: Session 2017-2018 wherein the petitioner taught the students BUL-01 (Urdu Literature) Roll No.D-17 BA 601 to 1250 and

the time of session is 09.00 am to 11.00 am. and the petitioner was allotted Room No.103. The petitioner took the second session from 11.00 am to 01.00 pm and he instructed to the Roll No.D17 BA 251 to 500 in room no.04. Therefore, it is evident from page No.98 also that the petitioner has been taking classes of the students.

9. Learned counsel further submits that the similar issue came before this Court in the case of *S.Dildar Haider vs. Jamia Milia Islamia* wherein the petitioner was working to the post of Instructor in Leather Craft in the Jamia. It was declared that the petitioner therein comes under the category of teaching and his age of retirement was equivalent to the teachers. Accordingly, the respondents were directed let the petitioner therein be retired at the age of 62 years, the then age of the retirement.

10. On the other hand, the learned counsel appearing on behalf of the respondent submits that Annexure P-24 is the name of the staff who had taken the classes occasionally. None of them is teacher, therefore, the petitioner cannot claim that he joined the respondent as a teacher and his retirement age is at par with the teachers.

11. Counsel for the respondent has drawn the attention of this Court to the appointment letter whereby the petitioner was appointed at a pay scale of Rs.5500/- per month plus three advance increments in the pay scale of Rs.5500-9000 plus usual allowances at the rates admissible under the rules of Jamia employees in terms of the category of certain terms. In the said letter it is specifically stated that the place of duty will be the Urdu Correspondence Course-Centre for Distance and Open Learning-CDOL, Jamia Millia Islamia but he may

be required to serve in any department/Institution of Jamia. Thus, occasionally the service of the petitioner was taken as Instructor to instruct the students who used to come to the centre. She further submits that for the year 2017-2018 some classes were taken by the petitioner but not before that and thus, in any circumstances, his services cannot be considered at par with the teachers.

12. Learned counsel further submits that the minimum pay scale for the teachers starts from 15600-39100 with GP of Rs.6,000. Hence it clearly shows that right from the beginning the post of Evaluator belongs to a separate and distinct scheme. The level and method of increment including the qualification of the post of Evaluator, function, nature of duty and responsibility and pay-scale are not at par with the teachers. However, the academic staff has notified by NHRD/UGC in addition to the above post of Evaluator which has not been sanctioned as a teaching post by UGC. Teaching posts are defined in the guidelines which is Annexure R-1 (page 57 of the petition.) She further submits that though along with the appointment letter, the guide of conduct of teachers was served to the petitioner, but neither from the nature of job nor from the act of the petitioner who worked as Evaluator cannot be considered that he is at par with the teachers.

13. Heard learned counsel for the parties and perused the material on record.

14. It is not in dispute that the petitioner had applied for the post of Evaluator (Urdu) pursuant to Advertisement dated 26.6.2002 whereby there are three categories of post i.e. (a) teaching posts (b)

academic/teaching posts (c) non-teaching posts.

15. It is also not in dispute that the post of Evaluator comes in the B category mentioned above i.e. academic/teaching post. Since it is clear in the Advertisement that (b) category is for academic/teaching post, for which the petitioner applied, therefore, under any stretch of imagination, it cannot be said that the petitioner belongs from non-teaching staff.

16. In the present petition, the petitioner seek direction thereby directing the respondent to continue the petitioner till the age of 65 years as is applicable on teaching staff. The case of the petitioner is not that he is asking the status and perks at par with the teachers.

17. Notification dated 9.11.2017, whereby the respondent has enhanced the age of superannuation of teachers from 62 to 65 years, which is re-produced as under :-

“This is to notify for information of all concerned that the Executive Council in its Meeting held on 27.09.2017 vide its Resolution No. EC-12017(IV):3.32 has approved the amendment in Regulation XXXVII captioned “Age of Retirement of Staff” in the light of UGD’s letter No. 71-2/2017(CU) dated 12.05.2017 regarding enhancement of age of superannuation of teachers from 62 to 65 years on the recommendation of the University’s Academic Council vide its meeting held on 12.09.2017 [Resolution No.AC-2017(III):15].”

18. On perusal of aforesaid notification, it is specifically stated that the amended Regulation XXXVII “age of retirement of staff” would be read as shown in the Annexure. As per the Annexure, which is at page 69, it is specifically mentioned that the **whole time teachers of Jamia** shall retire from the services of Jamia with effect from the date

on which they attain the age of 65 years.

19. In the said Annexure, nowhere stated about the teaching staff of the respondent. No doubt, as per Annexure dated 8.12.2004 along with the appointment letter which is served to the petitioner, it is stated that on the recommendation of *Majlis-i-Talimi, the Majlis-i-Muntazimah* (Executive Council) in its meeting held on 5.4.2016, has approved the code of conduct for teachers. No doubt, vide order dated 14.12.2017, the name of the petitioner nominated for qualifying under the category of teaching staff. However, nowhere in the said letter mentioned that petitioner is a teacher. The age increased is qua teachers only not the teaching staff.

20. Annexure P-24 (colly) also established that in the year 2017-2018, on some occasions the petitioner had also taken classes of the students who came to the Centre but that also does not establish that the petitioner is a teacher in any sense. Since the age of superannuation is increased of teachers from 62 to 65 years on the recommendations of University's Academic Council vide meeting also on 12.9.2017, the said recommendation is not applicable in case of the petitioner. Moreover, under any stretch of imagination, the petitioner cannot be considered that he is at par with the teachers for the reasons that in appointment letter dated 8.12.2004 he was appointed for the purpose of Evaluator (Urdu) on the basic pay of Rs. 5500 PM + 3 advance increments under the pay scale of Rs. Rs.5500-Rs.9,000 + usual allowances at the rate admissible under the rules under the Jamia employees.

21. It is pertinent to mention here that para 10 of the appointment

letter, it is specifically stated that the place of the duty of the petitioner will be the Urdu correspondence course – Centre for distance and open learning – CDOL –Jamia Millia Islamia, but he may be required to serve in any department/institution of Jamia. If the petitioner has taken some of the classes, as is evident from Annexure P-24 and as per page 97, i.e. for the session 2017-2018, it is not established that the petitioner is a teacher.

22. From the above documents, it may be said that he was in the teaching staff, only for the session 2017-2018, but age from 62 to 65 years has been increased of the teachers only, not of the teaching staff.

23. The functions and activities of the Evaluator is to check the assignments submitted by the students. As no class-room teaching is involved in the programme, the Evaluator goes through the assignments sent by the registered students and evaluates the same. The Evaluator prepares the certificates and after counter signature by the Honorary Director, Centre for Distance and Open Learning the Certificates are dispatched to the concerned student. The scope of work in terms of evaluation of assignments, preparation of certificates and dispatch of the same besides maintenance of admission register and other document are not academic in nature.

24. Thus, it is clear from the aforesaid that the functions, duties and activities performed by Evaluator do not come in classroom teaching, advanced study and research etc. His main job is only to evaluate the assignment, as being Evaluator (Urdu), received through post for issuing certificates to the students who wish to learn Urdu through Urdu Correspondence Course.

25. In addition, the UGC Regulations are there on minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges and moreover for the Maintenance of standards in higher education provides guidelines for appointments of Assistant Professors, Associate Professors, Professors and other Academic staff (Library and Physical Education) and in the guidelines nowhere mention about the post of Evaluator.

26. Moreover, his Career Progression is also not governed by the Scheme meant for teachers and other academic staff, i.e. UGC-CAS. The post of Evaluator carries pay scale of Rs.9300-34800 with GP of Rs. 4200, whereas the minimum pay scale for the teacher starts from 14600-39100 with AGP of Rs.6000.

27. Hence, it is clear that right from the beginning, the post of Evaluator belonged to a separate and distinct stream. The level and method of recruitment including qualification of the post of Evaluator, function, nature of duties and responsibilities and pay scales are not at par with the teachers/other academic staff as notified by MHRD/UGC. According, case of S. Dildar Haider (Supra) is not applicable in the facts and circumstances of the present case.

28. In view of the above discussion, I found no illegality and perversity in the office order dated 28.5.2018.

29. Accordingly, finding no merit in the present petition, the same is dismissed with no order as to costs.

SURESH KUMAR KAIT, J.

OCTOBER 31, 2018/sa