

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Order: January 30, 2018

- (10) + W.P.(C) 11975/2015 & CM 31814/2015
- (11) + W.P.(C) 11976/2015 & CM 31815/2015
- (12) + W.P.(C) 11977/2015 & CM 31816/2015
- (13) + W.P.(C) 11978/2015 & CM 31817/2015
- (14) + W.P.(C) 11980/2015 & CM 31818/2015
- (15) + W.P.(C) 11981/2015 & CM 31819/2015
- (16) + W.P.(C) 11985/2015 & CM 31824/2015
- (17) + W.P.(C) 11986/2015 & CM 31825/2015
- (18) + W.P.(C) 11987/2015 & CM 31826/2015
- (19) + W.P.(C) 11990/2015 & CM 31829/2015
- (20) + W.P.(C) 11991/2015 & CM 31830/2015
- (21) + W.P.(C) 11993/2015 & CM 31831/2015
- (22) + W.P.(C) 11994/2015 & CMs 31832/2015 & 6083/17
- (23) + W.P.(C) 11998/2015 & CM 31840/2015
- (24) + W.P.(C) 12000/2015 & CM 31843/2015
- (25) + W.P.(C) 12001/2015 & CM 31844/2015
- (26) + W.P.(C) 12003/2015 & CM 31846/2015
- (27) + W.P.(C) 12010/2015 & CM 31853/2015
- (28) + W.P.(C) 12011/2015 & CM 31854/2015
- (29) + W.P.(C) 12018/2015 & CM 31881/2015
- (30) + W.P.(C) 12019/2015 & CM 31882/2015
- (31) + W.P.(C) 12020/2015 & CM 31883/2015
- (32) + W.P.(C) 12021/2015 & CM 31884/2015
- (33) + W.P.(C) 1484/2016 & CMs 6467/16, 16427/16, 16461/16
- (34) + W.P.(C) 5070/2016 & CMs 21153/16, 27264/2016
- (35) + W.P.(C) 5078/2016 & CM 21163/2016
- (36) + W.P.(C) 5803/2016 & CM 23955/2016
- (37) + W.P.(C) 5835/2016 & CM 24022/2016
- (38) + W.P.(C) 10683/2016 & CM 41846/2016
- (39) + W.P.(C) 10684/2016 & CM 41847/2016
- (40) + W.P.(C) 10686/2016 & CM 41853/2016
- (41) + W.P.(C) 10687/2016 & CM 41854/2016
- (42) + W.P.(C) 10717/2016 & CM 41964/2016

- (43) + W.P.(C) 10767/2016 & CM 42148/2016
(44) + W.P.(C) 11534/2016 & CM 45406/2016
(45) + W.P.(C) 10814/2017 & CM 44361/2017
(46) + W.P.(C) 10826/2017 & CM 44383/2017
(47) + W.P.(C) 10829/2017 & CM 44388/2017
(48) + W.P.(C) 10830/2017 & CM 44389/2017
(49) + W.P.(C) 10831/2017 & CM 44393/2017
(50) + W.P.(C) 10840/2017 & CM 44452/2017
(51) + W.P.(C) 10841/2017 & CM 44453/2017
(52) + W.P.(C) 10842/2017 & CM 44454/2017
(53) + W.P.(C) 10843/2017 & CM 44455/2017
(54) + W.P.(C) 10844/2017 & CM 44456/2017
(55) + W.P.(C) 10845/2017 & CM 44458/2017
(56) + W.P.(C) 10846/2017 & CM 44459/2017
(57) + W.P.(C) 10853/2017 & CM 44469/2017
(58) + W.P.(C) 10855/2017 & CM 44472/2017
(59) + W.P.(C) 10856/2017 & CM 44473/2017
(60) + W.P.(C) 10866/2017 & CM 44497/2017

- (10) SHAHANA PARVEEN
(11) ABRAR AHMAD
(12) MALKA SAGHEER
(13) FARIHA HAIRAT
(14) SHAZIA NIAZI
(15) ISLAHUDDIN KHAN
(16) TABASSUM AHMAD
(17) SHAHID AKHTAR
(18) TABASSUM
(19) DR UZMA AKHTAR
(20) MOHD SHAMIM
(21) JAWED SUHAIL
(22) MD JAMILUR RAHMAN
(23) SHABANA BEGUM
(24) ANJUM RAIZ
(25) SHAGUFTA PARVEEN
(26) JAHAN ARA
(27) SAMEENA NASREEN

- (28) MOHAMMAD ANAS
(29) MOHD. WASEEM
(30) JAVEDAN PERVEZ
(31) SYED MOHD KAZIM
(32) ZAHIDA BEGUM
(33) RAFIA MUJEEB
(34) FARAHNA JABEEN
(35) SHAGUFTA SHANDAR KHAN
(36) MOHD AKRAM
(37) MOHD MASROOR ALAM
(38) SHAFAT HUSAIN FAROOQUI
(39) WAZI-UR-REHMAN
(40) SHAKEEL AHAMAD
(41) GAYOOR ALI
(42) NADEEM AHMAD
(43) SAJIDA KHATOON
(44) SHARFUDDIN
(45) SUNITA BHARDWAJ
(46) ALAUDDIN KHALID ANSARI
(47) NASREEN FATIMA
(48) NASREEN PERVEEN
(49) FAUZIA SHAHIN
(50) ABDUL WAHAB SAMAR
(51) YOGESH KUMAR SHARMA
(52) ABDUL QUDDUS ANSARI
(53) SHRI ABAD MIYAN
(54) MOHD. MUSTAFA
(55) IKRAM UL HAQUE
(56) KANEEZ FATIMA
(57) SADIA FATIMA WAHIDI
(58) WASIM ARSHAD ABBASI
(59) MUMTAZ AHMED
(60) AISHA ZAHEER

..... Petitioners

Through: Mr. Ashim Vachher, Mr. S.M.
Hashmi, Mr. Piyush Pawash, Mr. Vibhas

Dabas, Mr. Sumit Shoukeen and Mr. Hanzala
Kazim, Advocates

versus

JAMIA MILLIA ISLAMIA UNIVERSITY AND ORS

.....Respondents

Through: Ms. Zeba Khair, Advocate for
respondents No. 1 & 2
Mr. V. Sudeer and Ms. Heena Samnotra,
Advocates for respondent No.3-UGC

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. In the above-captioned petitions, petitioners are teaching/non-teaching staff working on contractual basis with respondent No.2-School, which is functioning under respondent No.1-University, and they seek mandamus to respondents No.1 and 2 to confirm petitioners on permanent posts and to grant same benefits to them as are being granted to staff of other schools functioning under the Delhi Government. Consequential benefits of seniority and pay scale in terms of recommendations of Sixth Pay Commission and other allowances are also sought by petitioners on parity basis.
2. Considering the commonality of the issues raised in the above captioned petitions, they have been heard together and by this common order in W.P.(C) 11994/2015, they are being disposed of.
3. At the outset, learned counsel for petitioners confines the relief claimed in these petitions to claim parity with teaching/non-teaching staff

of other schools functioning under respondent-University. To claim equal pay for equal work, learned counsel for petitioners relies upon a Supreme Court's decision in *State of Punjab and Others v. Jagjit Singh and Others*, (2017) 1 SCC 148.

4. Learned counsel for petitioners points out that *Jamia Middle School* and *Jamia Senior Secondary School* are fully funded by respondent-University and the teaching/non-teaching staff of these schools are working on permanent posts and are drawing salaries, etc., at par with Delhi Government Schools. Learned counsel for respondents No.1 & 2 points out that though recognition has been granted to respondent No.2-School, but it has been made clear by respondent-UGC that it will not be able to fund respondent No.2-School. Learned counsel for respondent-UGC submits that since *ex post facto* approval was sought by respondent No.2-School, therefore, as a policy matter, it was made clear that it will not fund self-financed schools, like respondent No.2-School. Learned counsel for respondent-UGC maintains that respondent No.1-University is fully funded by respondent-UGC but not the self-financed courses and schools run by it.

5. Learned counsel for petitioners submits that petitioners had made various Representations to respondents to claim regularization on the posts on which they are working and to claim parity with the teaching/non-teaching staff of *Jamia Middle School* and *Jamia Senior Secondary School*, but to no avail. Learned counsel for petitioners submits that *ex post facto* approval to respondent No.2-School was granted by respondent-UGC on 25th July, 2000 subject to furnishing of an

undertaking to the effect that the academic and supporting staff of respondent No.2-School relating to self-financed courses will be extended same terms and conditions of service as applicable to the staff of other Schools of *Jamia Milia Islamia University* which is funded by University Grants Commission. So, it is submitted that petitioners have to be put at par with the teaching/non-teaching staff of *Jamia Middle School* and *Jamia Senior Secondary School* in terms of the nature of their employment and salaries, etc..

6. At this stage, learned counsel for respondents No.1 & 2 points out that the aforesaid Undertaking, as sought by respondent-University vide its letter of 25th July, 2000, was not furnished for the reason that no financial liability was undertaken by respondent- UGC and it was not possible to treat the staff of respondent No.2-School at par with *Jamia Middle School* and *Jamia Senior Secondary School*, as respondent-School is self-financed.

7. The common stand of first two respondents in the counter-affidavit is that in the absence of any permanent cadre or permanent post, petitioners cannot be regularized and that respondent No.2-School is totally self-financed and is not receiving any grant from respondent-UGC and so, relief sought by petitioner cannot be acceded to. Alongwith counter-affidavit filed, the Budget Estimate of respondent No.2-School for the years 2015-16 has been appended as *Annexure R-4*.

8. Vide order of 21st September, 2017, respondent No.2-School was directed to place on record copies of the audited balance-sheets of the years 2014-15, 2015-16 & 2016-17 (if available). Learned counsel for

respondent-School submits that the order of 21st September, 2017 has been complied with and the audited balance-sheets for the aforesaid periods have been placed on record. However, it is brought to notice of this Court by learned counsel for respondent No.2-School that the audited balance-sheets do not relate to respondent No.2-School in particular but a tabulated chart showing the income and expenditure of respondent No.2-School for the last three years has been filed alongwith the audited balance-sheets.

9. Learned counsel for respondent No.2-School maintains that whenever there has been increase in tuition fee, etc., the salaries, etc., of the staff of respondent No.2-School were correspondingly enhanced.

10. Attention of this Court is drawn by learned counsel for petitioners to respondent- University's Communication of 9th September, 1997 (*Annexure-11*) in W.P.(C) 10814/2017 titled *Sunita Bhardwaj v. Jamia Millia Islamia University & Ors.* to submit that as per this Communication, respondent-School, which is self-financed, has become a source of revenue for other schools and a new teaching block, computer rooms and many other development programmes are proposed and the maintenance charges were regularly transferred to the Revenue Budget of *Jamia Milia Islamia University* every year and during the year 1996-97, an amount of ₹7 lacs charged as maintenance charges from students of respondent-School was placed in the Revenue Budget of respondent-University. Learned counsel for petitioners on instructions submits that even now 15% of total revenue from respondent-School goes to respondent-University and it is so evident from *Annexure R-4* to the

counter-affidavit filed in W.P.(C) 11994/2015. Learned counsel for respondent- UGC points out that in the aforesaid Communication (*Annexure-11*), an undertaking was given by respondent-University that it will not demand any financial assistance from UGC for respondent No.2-School and so, *ex post facto* approval was granted to respondent No. 2-School.

11. Attention of this Court is also drawn to UGC's minutes of Meeting (*Annexure-12 to W.P. (C) 10814/2017*) to point out that respondent-University proposes to strengthen its existing schools and also to establish new school complex at Jasola and so, it cannot be said that due to financial constraints, petitioners cannot be put at par with the staff of *Jamia Middle School* and *Jamia Senior Secondary School*. It is pointed out that there are various office orders of respondent-University vide which the budgetary expenditure of self-financed schools has come to light, which reveal that self-financed schools of respondent-University are having adequate income and enough funds at their disposal, but still the staff of respondent-School is being discriminated against and is not being treated at par with the teaching/non-teaching staff of *Jamia Middle School* and *Jamia Senior Secondary School*.

12. Learned counsel for respondent-University strongly refutes the aforesaid stand taken on behalf of petitioners and submits that an opportunity be granted to file counter-affidavits in W.Ps. (C) 10866/17, 10826/17, 10829/17, 10814/17, 10830/17, 10831/17, 10841/17, 10840/17, 10843/17, 10842/17, 10844/17, 10845/17, 10846/17, 10853/17, 10835/17 & 10836/17 to submit that the proposed budgetary

estimate cannot be equated with the actual income and expenditure. Learned counsel for respondent-UGC also seeks to refute the aforesaid stand taken on behalf of petitioners.

13. After having heard both the sides at some length, this Court finds that the factual aspects highlighted by learned counsel for the parties are disputed. Whether permanent posts can be created or not and as to what is the rationale to keep petitioners on contractual employment, are the matters concerning administration of respondent No.2-School, which have not been properly dealt with in the pleadings of the parties. The whole thrust of petitioners is on the financial aspect. Whether respondent No.2-School is financially sound to adopt the principle of '*equal pay for equal work*' or not, is very much disputed. On disputed facts, writ petitions cannot be decided. To keep the factual record straight, it is deemed appropriate to permit petitioners to make a comprehensive Representation to the Registrar of respondent-University within a period of two weeks from today and upon receiving of such a Representation, the competent authority of respondent-University shall provide an opportunity of hearing to authorized representative of petitioners and thereafter, shall address the basic issues raised in these petitions. Respondent-University/School is required to ensure that the principle of '*equal pay for equal work*' is applied and if not, then to provide reasons for not doing so. Respondent-University/School is also required to clarify the financial status of respondent No.2-School while taking into consideration the documents so relied upon by petitioners and to address the basic question of contractual/regular employment in respondent No.2-

School. It is made clear that even in cases of contractual employment, the parity aspect has to be given due weightage. Let respondent-University pass a speaking order on petitioners' Representation within a period of twelve weeks upon concluding the hearing on the Representation and convey the fate of Representation to authorized representative of petitioners, within a period of two weeks thereafter, so that petitioners may avail of the remedies as available in law, if need be.

14. With aforesaid directions, the above captioned petitions and the applications are disposed of.

(SUNIL GAUR)
JUDGE

JANUARY 30, 2018

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