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

+ **W.P. (C) 2081/2018 & CM APPL. 8614/2018**

DR. MOHD. ARSHAD MALIK Petitioner
Through: Mr. Kirti Uppal, Sr. Adv. with
Mr. Ajit Dayal, Mr. Awijit
Paliwal, Advocates

versus

JAMIA MILLIA ISLAMIA UNIVERSITY
& ORS Respondents
Through: Ms. Maninder Acharya, ASG
with Ms. Zeba Khair, Mr. Sahil
Sood, Mr. Harshul Choudhary
and Mr. Viplav Acharya, Adv.
Mr. Apoorv Kurup, Mr. A.C.
Boxipatru and Ms. Isha Mittal,
Adv. for UGC

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T
23.09.2019

1. The petitioner superannuated, as Associate Professor, in the Aligarh Muslim University, on 30th November, 2005, on attaining the age of 65. He, thereafter, applied for appointment as a Professor in Architecture, in the Department of Architecture and Ekistics in the Respondent No. 1 – University (hereinafter referred to as “the JMIU”), on 5th March, 2016. Consequent to the recommendations of the Selection Committee, which examined his case on 29th November,

2016, and in anticipation of approval of the Executive Council of the JMIU, the Vice Chancellor of the JMIU approved, *vide* communication dated 4th January, 2017, addressed to the petitioner, his appointment to the post of Professor in Architecture (Design Chair-Tenure Post). His salary was fixed at ₹ 1 lakh per month, apart from the usual allowances.

2. The following terms and conditions of appointment of the petitioner as Professor in Architecture, as contained in the aforesaid appointment letter, dated 4th January, 2017, merit reproduction:

“1. The appointment is tenure based and will remain valid for a period of three years or till further orders, whichever is earlier. This will confer no title on you to continue on a long term basis.

2. The Executive Council, however, reserves the rights of terminating your services forthwith or before the expiration of the stipulated period of notice by making payment to you of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

3. You will be governed by the Jamia’s Act, Statutes & Ordinances as amended from time to time.

5. The appointment will be terminated at any time by one month’s notice given by either side without assigning any reason.”

3. Clause 2 of Ordinance 29(A), of the Ordinances governing the JMIU, provided that the “Chair Professor” would initially be appointed for a period of three years, which could be extended by

another two years, subject to a review at the end of the third year by the Committee constituted by the Vice-Chancellor.

4. The powers of the various authorities and functionaries, in the JMIU are, by Sections 22 and 23 of the Act, contained in the Statutes of the JMIU, which are to be found in the Schedule to the Jamia Millia Islamia Act, 1988 (hereinafter referred to as “the Jamia Act”). Clause 37 of the Statutes deals with “removal of teachers”, and sub-clause (5) thereof reads as under:

“The removal of a teacher or a member of the academic staff shall require a two-thirds majority of the members of the Majlis-i-Muntazimah (Executive Council) present and voting.”

5. Before the expiry of his tenure, as stipulated in the aforesaid appointment order dated 4th January, 2017, the services of the petitioner were terminated, *vide* Office Order dated 13th February, 2018. The said Office Order – which the petitioner impugns – recorded the approval of the Vice-Chancellor (hereinafter referred to as “VC”) of the JMIU, to the serving, on the petitioner, of one month’s notice for termination of his services, in terms of Clause 5 of the appointment letter dated 4th January, 2017 and stipulated, consequently, that, on expiry of the said period, the services of the petitioner would automatically stand terminated. No reason for terminating the services of the petitioner was assigned in the said Office Order.

6. It may be noted, here, that though, in the writ petition, it has been alleged that the aforesaid Office Order, dated 13th February, 2018, was never served on the petitioner, the JMIU has, in its counter-affidavit, asserted that service thereof was effected, on the petitioner, by a peon, in proof whereof a copy of the peon book, purportedly containing the petitioner's signature, has been filed. The petitioner, in his rejoinder, disputes the signature as fabricated. Being in the nature of a disputed issue of fact, which is not amenable to resolution in writ proceedings, this Court refrains from returning any findings thereon, and proceeds on the premise that the impugned Office Order, dated 13th February, 2018, was, in fact, served on the petitioner.

7. Aggrieved by the issuance of the impugned Office Order, dated 13th February, 2018, the petitioner has approached this Court, by means of the present writ petition. It is sought to be contended, in the writ petition, that the termination of the petitioner's services, by the impugned Office Order dated 13th February, 2018, was tainted with *mala fides*, and was also violative of the provisions of the Central Universities Act, 2009 (hereinafter referred to as "the Central Universities Act") which, according to the writ petition, was the governing statute of the JMIU. The writ petition, however, does not contend to elucidate as to how the impugned Office Order violated the Central Universities Act; nor does it refer to any particular provision of the said Act, which stands violated by the impugned Office Order.

8. On 6th March, 2018, while issuing notice on the writ petition, this Court granted *ad interim* stay of operation of the impugned Office Order, dated 13th February, 2018.

9. The University has filed, in the present proceedings, CM 11105/2018, for vacation of the stay granted by this Court on 6th March, 2018, as well as a counter-affidavit. *Vide* order dated 12th April, 2018, this Court directed the JMIU to file an additional affidavit, explaining whether the premature termination of service of the petitioner had been approved by the EC of the JMIU, pursuant whereunto an additional affidavit also stands filed by the JMIU, on 10th May, 2018.

10. The University has, in its counter-affidavit and additional affidavit, contended, in sum and substance, as under:

(i) Ordinance 29(A), of the Ordinances governing the JMIU, dealt with the tenure post of Chair Professor. As per this Ordinance, the term of a Chair Professor was three years, which could be extended by two years. This, even by itself, indicated that appointment, as Chair Professor, was short and temporary in nature, and not regular. The appointment of the petitioner was, therefore, effectively contractual. Treating of such an appointment as regular would be antithetical to the intent of the Ordinance. As such, the petitioner, being a contract appointee, governed by Ordinance 29(A), could not claim the benefits of

regular appointment, as contained in Section 29 of the Jamia Act, and Statutes 27 and 37, applicable to the JMIU.

(ii) The petitioner having accepted his contract of appointment, was bound by the terms and conditions thereof. Clause 2 of the contract clearly stipulated that the EC reserved, to itself, the right of terminating the petitioner's services forthwith, subject to payment of the pay and allowances, for the period of notice or the unexpired period thereof. Clause 5 of the contract, further, stipulated that the appointment of the petitioner could be terminated, at any time, by one month's notice, without assigning any reason. The termination of the petitioner, as effected *vide* the impugned Office Order dated 13th February, 2018, drew sustenance from Clause 5 of the contract.

(iii) The impugned order, terminating the petitioner's services, was an order of termination simplicitor, and was not stigmatic in nature.

(iv) Inasmuch as the petitioner had been issued one month's notice, in terms of Clause 5 of the contract of appointment, it could not be alleged that the principles of natural justice and fair play had been violated.

(v) In its additional affidavit, the JMIU also places reliance on the model guidelines issued by the University Grants Commission for re-employment of superannuated teachers.

(vi) Apropos the issue of approval, of the EC, of the decision to terminate the services of the petitioner, the additional affidavit avers that, “as a practice, the Respondent University would place before the EC any appointment, suspension or termination of any of its staff, teaching or non-teaching whenever such action is taken by the JMIU” and that, therefore, “in the case of the petitioner too, his termination would have got reported to the EC”.

11. The petitioner has filed a rejoinder, to the counter-affidavit, as well as a reply to the additional affidavit, filed by the JMIU. The stand of the JMIU, as reflected in its counter-affidavit and additional affidavit, has been sought to be rebutted, by the petitioner, by contending thus:

(i) The assertion, of the JMIU, to the effect that the Central Universities Act did not apply to it, has been denied, by pointing out that the JMIU is a Central University, created by the Jamia Millia Islamia Act, 1988, and is also reflected as a Central University, in the list of Central Universities, as contained on the official website of the Ministry of Human Resource Development. It is pointed out, in this context, that the JMIU was wholly funded by the UGC.

(ii) There was nothing in the appointment letter, dated 4th January, 2017, appointing the petitioner as Professor of Architecture in the JMIU, or elsewhere in the Ordinances and

Statutes governing the JMIU, to indicate that appointment to the post of Chair Professor was contractual in nature, or that the post was temporary. Clearly, the post was for a tenure of three years, which could be extended, further, by another two years. The Ordinance did not contemplate removal of a Chair Professor before expiry of the specified tenure. The contention, of the JMIU, that the appointment of the petitioner, as Professor of Architecture, was temporary and contractual in nature was, therefore, denied. Reliance was placed on the judgment of the High Court of Madras in ***Dr. R. Soranam v. Manonmainam Sundaranar University***, 2012 SCC OnLine Mad 3645, to underscore the difference between tenure appointment and contractual appointment.

(iii) This was underscored by the fact that the appointment of the petitioner was consequent to the recommendation of the Selection Committee of the JMIU.

(iv) Clause 5 of the terms and conditions of appointment of the petitioner, as contained in his appointment letter dated 4th January, 2017 *supra*, was contrary to Ordinance 29(A) of the JMIU, as well as to the provisions of the Central Universities Act and could not, therefore, be enforced to the prejudice of the petitioner.

(v) Clause 37 of the Statutes governing the JMIU made it mandatory, prior to removal of teachers and members of academic staff, to issue a show cause notice, and also to afford,

to the person sought to be removed, a reasonable opportunity of being heard. The decision to remove the teacher concerned had also to be approved by a majority, of two-thirds of the members of the EC, present and voting.

(vi) The submission that the termination, of the petitioner, was not stigmatic, was also incorrect, in view of the admission, of the JMIU, that the decision to terminate the petitioner was the result of a complaint, dated 12th December, 2017, made against him, by the Head of the Department of Architecture in the JMIU, to the Registrar thereof. This made compliance, with the principles of natural justice, mandatory before terminating the petitioner's service.

(vii) Despite the fact that, in its order dated 12th April, 2018, in the present case, this Court had specifically required the JMIU to file an additional affidavit, on the issue of whether the decision to terminate the services of the petitioner had, or had not, been approved by the EC, the JMIU had chosen to file the minutes, not of the meeting where the decision to terminate the services of the petitioner was taken, or considered, but, rather, the minutes of the meeting, dated 10th March, 2017, approving the decision to appoint the petitioner as Professor of Architecture. The submission of the JMIU, in its additional affidavit, to the effect that power had been conferred to the Registrar, or the VC, of the JMIU, to terminate the services of the petitioner without approval of the EC, was false. As a matter of fact, no approval, of the EC, had been obtained, before

terminating the petitioner's services. This was also clear from the somewhat ambivalent submission, in the additional affidavit of the JMIU, that, in the case of the petitioner, too, "his termination would have got reported to the EC".

Analysis

12. I have perused the material on record, and heard learned Counsel appearing for the rival parties. The petitioner was represented by Mr. Kirti Uppal, learned Senior Counsel, whereas Ms. Zeba Khair appeared on behalf of the JMIU. Learned Counsel essentially reiterated the stands adopted by them in the pleadings before this Court.

13. Apart from *Dr. R. Soranam (supra)*, Mr. Uppal placed reliance on the judgment of the Supreme Court in *P. Venugopal v. Union of India, (2008) 5 SCC 1*. Ms. Khair, learned counsel for the respondent, on the other hand, placed reliance on the following authorities:

- (i) *Satish Chandra Anand v. Union of India, AIR 1953 SC 250,*
- (ii) *Satish Joshi v. Union of India, 2017 (3) SCT 481 (Delhi),*
- (iii) *G. B. Pant Agricultural & Technological University v. Kesno Ram, AIR 1995 SC 718,*
- (iv) *State of Uttar Pradesh v. Kaushal Kishore Shukla, (1991) 1 SCC 691,*

- (v) *State of Haryana v. Satyender Singh Rathore*, AIR 2005 SC 4251,
- (vi) *Dipti Prakash Banerjee v. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta*, AIR 1999 SC 983,
- (vii) *Suresh Chandra Jain v. Director General*, (2015) 1 SCC 185, and
- (viii) *Governing Council of Kidwai Memorial Institute of Oncology v. Dr. Pandurang Godwalkar*, (1992) 4 SCC 719.

Nature of appointment of the petitioner – contractual or regular?

14. The University has sought to contend that the appointment of the petitioner, as Chair Professor of Architecture, was contractual, and not regular, in nature. I am unable to agree. Ordinance 29(A), which governs the JMIU, specifically provides for the post of Chair Professor. The Ordinance stipulates that the post would be a tenure post, for a period of three years, extendable by a further period of two years. There is no reference, in the Ordinance, to the post being “contractual” in nature. The petitioner was appointed, to the said post, pursuant to application, and after due consideration of his case by a Selection Committee of the JMIU. The appointment order, dated 4th January, 2017, does not even remotely suggest, let alone stipulate, that the appointment is contractual in nature. Rather, the letter specifically states that the petitioner had been appointed by the VC, on the basis of the recommendations of the Selection Committee, held on 29th November, 2016, in anticipation of the approval of the EC. The

University has also placed, on record, minutes of the meeting, dated 10th March, 2017, of the EC of the JMIU, approving the appointment of the petitioner as Professor in Architecture. These minutes, too, do not indicate, anywhere, that the appointment was contractual in nature.

15. Some of the decisions, relied upon by the JMIU, would aid in appreciating this distinction.

16. In *Satish Chandra Anand (supra)*, the recital of facts itself commences by noting that “the petitioner was employed by the Government of India on a five year contract”. Later, it is noted that, shortly before the expiration of the said contract, the Government of India made the petitioner a new offer, *vide* letter dated 30th June, 1950. Clause (3) of the terms and conditions, as contained in the said letter, read thus:

“Other conditions of service: – *On the termination of your contract* you will be allowed to continue in your post temporarily for the period of the Resettlement and Employment Organisation and *will be governed by the Central Civil Services (Temporary Service) Rules, 1949*, unless you are a permanent Government servant.”

(Emphasis supplied)

The Supreme Court was, therefore, dealing, in *Satish Chandra Anand (supra)*, with a situation in which there was, in the terms and conditions governing the appointment of the petitioner before it, an express stipulation to the effect that the petitioner’s appointment was contractual. No such stipulation exists in the communication, dated

4th January, 2017, whereby the petitioner was appointed as Professor of Architecture.

17. In ***Kaushal Kishore Shukla (supra)***, it is observed, by the Supreme Court, that the respondent, in that case, was “admittedly an ad hoc and temporary employee”. It is further noted that he was “appointed on ad hoc basis on 18.2.1977 as an Assistant Auditor... for a fixed period ending on 31.8.1977” and that, in December, 1977 “the respondent was again appointed on ad hoc basis for a period ending on 28.2.1978.” As a regular appointment could not be made, the services of the respondent, in that case, was extended, on ad hoc basis, from time to time. The judgment further notes that “the terms and conditions of respondent’s service as contained in the order of appointment *stated that the appointment was ad hoc, purely temporary for the term fixed in the order* and his services were liable to be terminated at any time without assigning any reason.”

18. Similarly, the judgment, of a learned Single Judge of this Court, in ***Satish Joshi (supra)*** commences with the observation that “the petitioner’s *contractual services* with the Central Medical Service Society were terminated on the ground of unsatisfactory service/performance.”

19. Unlike these cases, in the present case, no reference is to be found, in the communication, dated 4th January, 2017 *supra*, appointing the petitioner as Professor of Architecture, to the effect that the appointment was ad hoc, temporary, or contractual in nature.

Rather, it is stated that the appointment was effected on the basis of the recommendations of a Selection Committee, in anticipation of the approval of the EC, on an existing and sanctioned post of Chair Professor, at a consolidated pay of ₹ 1 lakh per month, the only caveat being that the appointment was tenure based and would remain valid for three years or till further orders, whichever was earlier. Ordinance 29(A), of the Ordinances governing the JMIU, which deals with the post of Chair Professor, too, does not contemplate appointment to the said post as being contractual, temporary or *ad hoc* in nature.

20. The appointment of the petitioner, as Professor of Architecture, *vide* the aforesaid appointment order dated 4th January, 2017, was, therefore, a regular appointment, albeit for a tenure of three years. It cannot be treated as contractual, *ad hoc* or temporary. It was effected in accordance with the Ordinances governing the JMIU, after consideration and recommendation by a Selection Committee, and was granted *ex post facto* approval of the EC. The reliance, by the respondent, on the decisions in **Satish Chandra Anand** (*supra*), **Satish Joshi** (*supra*) and **Kaushal Kishore Shukla** (*supra*) is, therefore, misconceived.

21. In the case of regular appointments against tenure posts, the position that prevails, in law, is that premature curtailment of such an appointment is, ordinarily, unsustainable. The issue had arisen for consideration, before the Supreme Court, in the context of appointment to the post of Director of the All India Institute of

Medical Sciences (AIIMS), in *Dr. L. P. Agarwal v. Union of India*, (1992) 3 SCC 526 and *P. Venugopal (supra)*.

22. The petitioner, in *Dr. L. P. Agarwal (supra)*, was appointed as Director, AIIMS, w.e.f. 18th February, 1979. The order of appointment, dated 6th April, 1979, stated that he had been appointed as Director for a period of five years, or till he attained the age of 62 years, whichever was earlier. This appointment, the judgment notes, was made on the basis of the recommendation of a Special Selection Committee, which was accepted by the Institute-Body and approved by the Government of India. Dr. Agarwal was confirmed, in the said post, on 19th February, 1980. By an order dated 24th November, 1980, he was retired from service, in public interest, by giving him three months' pay and allowances, in lieu of notice. Dr. Agarwal challenged the decision, and the dispute made its way to the Supreme Court.

23. The Supreme Court noted that the Recruitment Rules, governing the post of Director, provided that the post had to be filled by direct recruitment, and that it was a tenure post, for five years, of which the first year would be on probation basis. In this scenario, the Supreme Court framed the issue, arising before it for consideration, in para 3 of the report, thus:

“The question for our consideration is whether the incumbent of the post of Director, AIIMS can be prematurely retired before the completion of his tenure? In other words whether the service-law concept of “premature retirement in public interest” is applicable to a tenure post filled by way of direct recruitment.”

24. Before the Supreme Court, the AIIMS relied on Regulation 30(3) of the All India Institute of Medical Sciences Regulations, 1958 (hereinafter referred to as “the AIIMS Regulations”), which specifically conferred absolute power (referred to, in the Regulation, as “absolute right”), on the appointing authority to, in public interest, retire any employee of the AIIMS by giving him notice of not less than three months in writing or three months’ pay and allowances in lieu of such notice. Further, Regulation 35 of the AIIMS Regulations also provided that, in respect of matters for which the Regulations did not contain any provision, the rules as applicable to Central Government Servants, regarding general conditions of service, pay, allowances, leave salary, joining time, foreign service terms, etc., and orders and decisions issued in this regard by the Central Government from time to time would apply *mutatis mutandis* to the employees of the AIIMS. The AIIMS also relied, before the Supreme Court, on Regulation 35, in conjunction with Fundamental Rule 56(j), to contend that it was within its rights in retiring Dr. Agarwal, in public interest. As against this, the appellant Dr. Agarwal contended that the post of Director, AIIMS, was a tenure post, as per the Recruitment Rules, and it was legally impermissible to truncate the stipulated tenure, by prematurely retiring him.

25. Accepting the submission of Dr. Agarwal, the Supreme Court held thus (in para 16 of the report):

“We have given our thoughtful consideration to the reasoning and the conclusions reached by the High Court. We are not inclined to agree with the same. *Under the Recruitment Rules the post of Director of the AIIMS is a tenure post.* The said rules further provide the method of direct recruitment for filling the post. *These service conditions make the post of Director a tenure post and as such the question of superannuating or prematurely retiring the incumbent of the said post does not arise.* The age of 62 years provided under proviso to Regulation 30(2) of the Regulations only shows that no employee of the AIIMS can be given extension beyond that age. This has obviously been done for maintaining efficiency in the Institute services. We do not agree that simply because the appointment order of the appellant mentions that “he is appointed for a period of five years or till he attains the age of 62 years”, the appointment ceases to be to a tenure-post. Even an outsider (not an existing employee of the AIIMS) can be selected and appointed to the post of Director. *Can such person be retired prematurely curtailing his tenure of five years? Obviously not.* The appointment of the appellant was on a five years tenure but it could be curtailed in the event of his attaining the age of 62 years before completing the said tenure. *The High Court failed to appreciate the simple alphabet of the service jurisprudence.* The High Court's reasoning is against the clear and unambiguous language of the Recruitment Rules. The said rules provide “Tenure for five years inclusive of one year probation” and the post is to be filled “by direct recruitment”. *Tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of the office on completion of his tenure. The question of prematurely retiring him does not arise. The appointment order gave a clear tenure to the appellant.* The High Court fell into error in reading “the concept of superannuation” in the said order. *Concept of superannuation which is well understood in the service jurisprudence is alien to tenure appointments which have a fixed life span. The appellant could not therefore have been prematurely retired and that too without being put on any notice whatsoever.”*

(Italics and underlining supplied)

Following on the above, the Supreme Court allowed the appeal of Dr. Agarwal with costs, and quashed the resolution of the Institute-Body of the AIIMS, retiring him from service.

26. As in the case of Dr. Agarwal, Dr. Venugopal, the petitioner in *P. Venugopal (supra)*, too, was prematurely removed from the post of Director of the AIIMS on 30th November, 2007, when his five-year tenure, on the said post, was yet to expire. Inasmuch as the AIIMS sought to contend that the termination of the services of Dr. Venugopal had been effected under the proviso to Section 11(1-A) of the AIIMS Act, Dr. Venugopal impugned the said proviso. It was sought to be contended that the said proviso had been inserted in Section 11(1-A) of the AIIMS Act, by the All India Institute of Medical Sciences (Amendment) Act, 2007, specifically to target him, and facilitate his premature removal, from the post of Director.

27. The Supreme Court, in para 23 of the report, found force in the submission, advanced by learned Senior Counsel who appeared for Dr. Venugopal, that the aforesaid proviso had been introduced with a view to single out Dr. Venugopal for premature termination. While the present case does not concern itself with any provision akin to the proviso, as introduced in Section 11(1-A) of the AIIMS Act, the Supreme Court, notably, reiterated its earlier view, on the aspect of premature curtailment of tenure, in the case of tenure posts. Paras 29, 32 and 36 of the report, which contain observations that are relevant in this context, merit reproduction, thus:

“29. Keeping the provisions, as noted hereinabove, in our mind, we now proceed to take up the question in hand. The tenure of the writ petitioner as a Director to act as a member of the governing body is for five years which expires on 2-7-2008 on the basis of his initial appointment and, *therefore, it is not in dispute that it was a tenure appointment which could not be otherwise dealt with.*

32. From the above quotation, as made in para 16 of the said decision of this Court, it is evident that this Court has laid down that the term of 5 years for a Director of AIIMS is a permanent term. *Service conditions make the post of Director a tenure post and as such the question of superannuating or prematurely retiring the incumbent of the said post does not arise at all.* Even an outsider (not an existing employee of AIIMS) can be selected and appointed to the post of Director. *The appointment is for a tenure to which principle of superannuation does not apply. “Tenure” means a term during which the office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said post begins when he joins and it comes to an end on the completion of tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of the office on completion of his tenure.*

36. From the aforesaid discussion, the principle of law stipulated by this Court is that *curtailment of the term of five years can only be made for justifiable reasons and compliance with principles of natural justice for premature termination of the term of a Director of AIIMS squarely applied also to the case of the writ petitioner as well and will also apply to any future Director of AIIMS.* Thus there was never any permissibility for any artificial and impermissible classification between the writ petitioner on the one hand and any future Director of AIIMS on the other when it relates to the premature termination of the term of office of the Director. Such an impermissible overclassification through a one-man legislation clearly falls foul of Article 14 of the Constitution being an apparent case of “naked discrimination” in our democratic civilised society governed by the rule of law and

renders the impugned proviso as void ab initio and unconstitutional.”

(Italics and underlining supplied)

28. Another decision, which specifically addressed the issue of premature termination of a tenure appointment, was ***Union of India v. Shardindu, (2007) 6 SCC 276***. The respondent Shardindu, in that case, was appointed as Chairperson of the National Council for Teachers Education (NCTE), w.e.f. 22nd January, 2004, for a fixed period of four years or till he attained the age of 60, whichever was earlier. Before expiry of the stipulated four-year period, however, *vide* order dated 18th November, 2005, the appointment of Shardindu as Chairperson of the NCTE was prematurely terminated, and he was repatriated to his parent cadre. This, avowedly, was pursuant to an enquiry, conducted against him for an incident which took place in 2001, before he was brought, on deputation, to the tenure post of Chairperson of the NCTE. The Supreme Court was, therefore, concerned with the issue of whether it was permissible to prematurely terminate the deputation of Shardindu, which was otherwise for a fixed tenure, prior to the expiry of the tenure. The Single Judge, and the Division Bench of this Court, had held in favour of Shardindu. The doctrine of pleasure, under Article 310 of the Constitution of India, was pressed into service, by the appellant-Union of India, before the Supreme Court, but this submission was rejected. In para 16 of its report, the Supreme Court opined thus:

“Now, the position that emerges is that the respondent was appointed for a fixed tenure of four years or till he attains the age of sixty years whichever is earlier under Section 4 of the

Act and while discharging his duties he did not incur any of the disqualifications as mentioned in Sections 5 and 6. Therefore, so far as this statutory appointment is concerned, it cannot be terminated because he had not incurred any of the disqualifications.”

Interestingly, in the same para of the judgment, the Supreme Court observed that, even if the position that resulted, in law, was “embarrassing”, nonetheless, the Court could not proceed in ignorance of the statutory provisions.

29. A careful perusal of the terms of appointment, as contained in the communication, dated 4th January, 2017, appointing the present petitioner as Professor of Architecture, reveals that it contemplates three distinct exigencies, in which the petitioner’s service as Professor could be brought to an end. These are to be found in Clauses 1, 2 and 5 of the terms of appointment. Clause 1 contemplates the termination, of the service of the petitioner, with the respondent, at the expiry of three years, or till further orders, whichever was earlier. Clause 2 reserved, with the EC, the right to terminate the petitioner’s services forthwith, or before expiry of the stipulated notice period, by payment, to the petitioner, of a sum equivalent to the pay and allowance for the notice period or the unexpired portion thereof. Clause 5 permitted termination, of the petitioner’s appointment, at any time, by one month’s notice given by either side, without assigning any reason.

30. Of the aforesaid three clauses, involvement of the EC of the JMIU is visualised only by Clause 2, which contemplates termination,

of the petitioner's services, forthwith or before expiration of the stipulated notice period. Inasmuch as the impugned Office Order, dated 13th February, 2018, neither terminated the services of the petitioner forthwith, nor terminated his services before the expiration of the stipulated notice period of one month, Clause 2, of the conditions of appointment, as contained in the appointment order dated 4th January, 2017, was not invoked, and does not apply.

31. It is apparently for this reason that the impugned Office Order, dated 13th February, 2018, purports to have been issued under Clause 5 of the letter of appointment, dated 4th January, 2017. Clause 5, read in isolation, does not specifically refer to involvement of the EC. At the same time, what it states is that the appointment of the petitioner would be terminated by one month's notice "given by either side". This stipulation in Clause 5 is ambiguous, inasmuch as it does not specify the authority, or functionary, in the JMIU, who would be competent to exercise powers thereunder. Guidance, in this regard, is, however, provided by Clause 3 of the conditions of service governing the petitioner, as delineated in the aforesaid letter dated 4th January, 2017, which stipulates that the services of the petitioner would be governed by the Jamia Act, Statutes and Ordinances applicable to the JMIU. As already noted hereinabove, Clause 37(5) of the Statutes governing the JMIU, as appended to the Jamia Act, dealing with "removal of teachers", requires that the removal of a teacher, or a member of the academic staff, would require to be ratified by a two-thirds majority of the Members of the Executive Council of the JMIU, present and voting. "Teachers of the University" are defined, in clause

(n) of Section 2 of the Jamia Act, as meaning “Professors, Readers, Lecturers and such other persons as may be appointed for imparting instruction or conducting research in the University and are designated as teachers by the Ordinances.” The petitioner, in his capacity as Professor of Architecture was, therefore, unquestionably, a “teacher” in the JMIU, for the purposes of applicability of the Statutes. His removal, therefore, had necessarily to be preceded by concurrence of the EC, voting, by a two-thirds majority.

32. In its additional affidavit, filed in the present proceedings on 10th May, 2018, the JMIU has, apparently pre-empting this argument, averred that the post of Professor of Architecture, against which the petitioner was appointed, “being a post retirement post, the provisions related to appointment and removal of the regular teaching staff of the Respondent No.1 University does not apply.” I confess my inability to subscribe to this submission. The fact that the petitioner had been appointed as Professor of Architecture in the JMIU, after he had retired as Associate Professor in the Aligarh Muslim University, does not detract, in any manner, from the fact that his appointment, in the JMIU, was a fresh appointment. It cannot be treated as a “post-retirement” appointment. The concept of “post-retirement appointment” necessarily predicates retirement, of the appointee concerned, from the very institution in which he is being appointed after retirement. The appointment of the petitioner as Professor of Architecture in the JMIU, therefore, does not qualify as a “post-retirement appointment”, as the petitioner had never retired from the

services of the JMIU, but had, instead, retired from the services of the Aligarh Muslim University.

33. That apart, neither Clause 37 of the Statutes governing the JMIU, nor Section 2 (n) of the Act, distinguish between persons appointed to the services of the JMIU, after they had retired from a post held in another organisation, vis-à-vis other appointees. “Teachers of the University”, as defined in Section 2(n) of the Act, enfold all Professors, Readers, Lecturers and such other persons as may be appointed for imparting instruction or conducting research in the JMIU. The definition does not refer, at any point, to any office, which in appointee might, or might not, have held, prior to her, or his, appointment in the JMIU, or any post that the appointee might have, at an earlier point of time, been holding, in the JMIU or elsewhere. The attempt, of the JMIU, to escape the rigour of Clause 37 of the Statutes, by which it is governed, and which stand incorporated, by reference, to the conditions of appointment of the petitioner, as contained in the appointment order dated 4th January, 2017 *supra* has, therefore, necessarily to be regarded as completely misconceived.

34. In these proceedings, this Court required, *vide* order dated 12th April, 2018, the filing of a supplementary counter/additional affidavit, by the JMIU, “to show as to whether premature termination of the petitioner’s contract was approved by the Executive Council”. In deference to the said direction, an additional affidavit was filed, by the JMIU on 10th May, 2018. The University has, however, filed, with the said additional affidavit, minutes of the Meeting of the EC of the

JMIU, conducted at 3:30 PM on 10th March, 2017, which approved the recommendation, of the Selection Committee, to appoint the petitioner as Chair Professor. No document, evidencing approval, by the EC, to the premature termination of the tenure of the petitioner's appointment as Chair Professor of Architecture, was placed on record, by the JMIU, despite the specific direction of this Court. Rather, significantly, on this aspect, para 5 of the additional affidavit filed by the JMIU avers thus:

“It is pertinent to mention that the EC had approved the appointment of the Petitioner and *it is deemed to be understood that the EC had approved the contract of appointment which contains the said termination clause 2 (clause 5) among other terms and conditions, giving the right to the JMIU to give one month's notice without assigning any reason.* In terms of the said appointment letter the termination clause clearly mentions that the one month's notice could be given by either side without assigning any reason. The copy of the said EC resolution dated 10.03.2017 is provided as Annexure R5. *It is also pertinent to mention that is a practice, the Respondent University would place before the EC any appointment, suspension or termination of any of its staff, teaching or non-teaching whenever such action is taken by the JMIU. In the case of the Petitioner too, his termination would have got reported to the EC.*”

(Italics and underlining supplied)

35. This Court records its unequivocal disapproval of the underscored averment, as contained in the afore-extracted passage from the additional affidavit of the JMIU. Fairness and a forthright approach, towards the court, is expected of every litigant, the expectation being heightened in the case of a public institution such as the JMIU, which is no stranger to court proceedings. The order, dated

12th April, 2018, of this Court, called for an additional affidavit, from the JMIU, specifically on the aspect of whether the decision to terminate the service of the petitioner had, or had not, received the approval of the EC. At the very least, the JMIU was expected to answer this issue, in the affirmative or in the negative. Responding, to the request of the Court, with an averment that, in the case of the petitioner, his termination “would have got reported to the EC” displays complete lack of candour, and is, in fact, a disservice to the Court. It is an averment which is neither here nor there, and should never find a place in an affidavit filed, on oath, by a public functionary. Any lack of forthrightness and candour, before the Court, is bound to invite an adverse inference. I proceed, therefore, on the premise that the termination, of the services of the petitioner, by the impugned order dated 13th February, 2018 was, in fact, *not* preceded by any approval of the EC, and that, in fact, *no ex post facto* approval, therefore, was granted either. This, indeed, appears to be the situation as, were such approval available on the record, there is no reason why the JMIU would not have placed it on record, especially in view of the specific direction of this Court, in its order dated 12th April, 2018, to the said effect.

36. Viewed thus, the termination of the petitioner’s service has necessarily to be regarded as having infringed Clause 37(5) of the Statutes governing the JMIU, read with Clause 3 of the conditions of appointment of the petitioner, as contained in the appointment letter dated 4th January, 2017 *supra*. Needless to say, the conditions of appointment, as set out in the letter dated 4th January, 2017, have to be

read comprehensively and as an integrated whole and, thus read, Clause 5 of the conditions of appointment has to be read in conjunction with Clause 3 which, in its turn, would invite the application of Clause 37(5) of the Statutes of the JMIU. Thus read, the conclusion, that the termination of the petitioner's services, by the impugned order dated 13th February, 2018, was contrary to the Statutes governing the JMIU, as well as the conditions of appointment, as set out in the appointment letter dated 4th January, 2017 *supra*, of the petitioner, is inescapable.

37. Furthermore, it is admitted, by the JMIU, in its application, for vacation of stay, that there had been a complaint, dated 12th December, 2017, made against the petitioner, by the Head of the Department of Architecture in the JMIU and that, "in view of this", the JMIU did not deem fit to let him continue with the said post. The complaint, dated 12th December, 2017, to which this paragraph alludes, alleges that the petitioner was a "perpetual late comer", always missed one class, was always absent in the afternoon session, often remained absent without leave, and remained absent in both sessions, despite having been assigned invigilation duties, for the semester examinations conducted on 4th and 6th December, 2017. Despite this, the petitioner's services were terminated only on 13th February, 2018, i.e., nearly two months after the said complaint. The petitioner could not, therefore, be regarded as so incorrigible, that he could not be afforded an opportunity to explain the allegations against him. Inasmuch as, in my view, the petitioner's appointment as Professor of Architecture could not be treated as anything less than a regular appointment, albeit

against a tenure post, he was entitled to due compliance, with the principles of natural justice and fair play, before premature evisceration of the tenure of his service as Professor.

38. On each and all of the above grounds, therefore, the impugned order, dated 13th February, 2018, terminating the services of the petitioner, deserves to be axed. The post of Professor of Architecture, against which the petitioner had been appointed, being in the nature of a tenure post, premature curtailment of such tenure is, ordinarily, not permissible in law. That apart, any act, on the part of the JMIU, resulting in disengagement of the services of the petitioner, would amount to “removal” and, therefore, necessarily required approval by a two-thirds majority of the members of the EC of the JMIU, present and voting. Despite the specific direction, by this Court, to the JMIU, to place, on record, the fact of whether such concurrence of the EC had preceded the termination of the petitioner services, the additional affidavit, filed by the JMIU, impliedly acknowledges that there was no such approval, by the EC, to the said decision. Finally, the termination of the petitioner, having been, avowedly, effected in view of the complaint, dated 12th December, 2017, of the Head of the Department of Architecture, the petitioner was entitled to an opportunity to answer the allegations contained in the said complaint, before his services were disengaged.

Conclusion

39. Resultantly, the impugned order, dated 13th February, 2018, terminating the services of the petitioner, is quashed and set aside.

Inasmuch as the tenure of the petitioner's service, as Professor of Architecture in the JMIU, would come to an end only in January, 2020, the petitioner is entitled to be reinstated as Professor of Architecture in the JMIU. However, while the petitioner would be entitled to be treated as having continued in service, as if the Office Order dated 13th February, 2018, had never been passed, and would also be entitled to fixation of his salary and emoluments, and pensionary benefits, if any, on that basis, I deem it appropriate to restrict the back wages, payable to the petitioner, to 50% of the basic pay, to which he would have been entitled, had the impugned Office Order dated 13th February, 2018, not been passed.

40. Payments, to the petitioner, in accordance with the above directions, would be made, by the JMIU, within four weeks of receipt, or production, before it, of a certified copy of this judgment.

41. The writ petition is allowed to the above extent and in the above terms, with no orders as to costs.

C. HARI SHANKAR, J

SEPTEMBER 23, 2019

HJ