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

Reserved on: 25.03.2019

Pronounced on: 23.04.2019

+ W.P.(C) 6152/2018

DR. FAQEER MOHAMMAD

..... Petitioner

Through Mr. Chandra Shekhar with Mr.
Prashant Shekhar, Advs.

versus

JAMIA MILLIA ISLAMIA AND ANR.

..... Respondents

Through Ms. Zeba Khair, Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner seeks direction thereby directing the respondents to apply the policy of G.P. Fund-cum-pension-Gratuity Scheme prevalent on 24.12.2003, the date when the petitioner accepted the offer of appointment and when his rights stood crystallized and finalize and disburse the petitioner's retiral benefits, ignoring their decisions to the contrary.

2. The case of the petitioner is that the petitioner had been the guest faculty in the Department of Chemistry from 16.09.2002 to the academic session 2003-2004 with qualification that his engagement as guest teacher was w.e.f. the date of taking the classes in the said academic session 2003-

2004 or till vacancy exists or till further orders which ever earlier. During his engagement as guest faculty, he applied for the post of lecturer in Department of Chemistry in response to an advertisement published by the respondents. The petitioner was called for and accordingly appeared before the Selection Committee on 15.10.2003 and the said Committee recommended for the appointment of petitioner along with several other candidates. Finally, the Executive Counsel of the University approved the recommendation of the Selection Committee in its meeting held on 25.11.2003. Thereafter, the respondents issued the offer of appointment on 16.12.2003 to the petitioner and in response the petitioner upon completion of formalities of medical and verification of documents, submitted his acceptance by his letter dated 18.12.2003. Accordingly, the respondents issued the appointment letter on 23.12.2003 calling upon the petitioner to report for duty on 06.01.2004 positively. The said appointment letter in its clauses 13 & 14 further mentions as under:-

*“13. You will be governed by the **G. P. Fund cum Gratuity Scheme** for which you may indicate the rate of your subscription in accordance with the provision of the above scheme.*

*14. If you accept the appointment **on the above terms and conditions** you are requested to intimate your acceptance to the undersigned through proper channel **immediately** and report your duty on **06.01.2004***

***positively**. Otherwise your appointment will be deemed cancelled and the offer of appointment/appointment letter will be given to the next candidate on the panel.”*

3. Accordingly, the petitioner accepted his letter of appointment subject to the aforesaid conditions. The petitioner intimated his acceptance of appointment on 24.12.2003 through proper channel and the petitioner eventually joined on 06.01.2004 as directed in the letter of appointment. The respondents, following the petitioner's appointment asked him to submit his nomination for provident fund while allocating the P.F. A/C No. G-2818 and the employee I.D.: FM-2087. In response, the petitioner submitted his nomination on 21.09.2004 for the P.F. on the prescribed format given by the University. The respondents' University for some time deducted the amount from the petitioner's salary. Thus, the respondents have been following the terms of appointment as contained in the letter of appointment.

4. Further case of the petitioner is that the Government of India introduced the New Pension Scheme in the budget of 2003-2004 which was operationalized w.e.f 01.01.2004 and the announcement thereof was made through O.M. dated 13.11.2003. The proposal was approved by Government of India on 23.08.2003. It was this reason that the petitioner's

appointment letter contains the clause extracted above that he would be governed by G.P. Fund-cum-Pension-cum-Gratuity Scheme and it was also for the same reason that the petitioner was allotted G.P.F A/C and employee I.D. No.. Surprisingly, the respondents subsequently took the petitioner's rights to have crystallized on 06.01.2004, the date when he was asked to join in the appointment letter which otherwise required the petitioner to intimate his acceptance immediately i.e. immediate to 23.12.2003. The petitioner later came to know that the respondents had taken 06.01.2004 as the date of his joining whereas the petitioner submitted the acceptance of his appointment on 24.12.2003. Accordingly, the petitioner suspecting foul play wrote a letter on 16.11.2006 and requested for correction of his records in the University by changing the date of his joining to 24.12.2003 from 06.01.2004. In reply thereto, the University stated that there were winter vacations when offer of appointment was issued to the petitioner and the University re-opened after winter vacations on 06.01.2004. Further stated that the petitioner was not working in the University, therefore, the petitioner was allowed to join on reopening of the University i.e. on 06.01.2004, because as a matter of policy fresh teachers were not allowed to join during vacations.

5. Learned counsel appearing on behalf of the petitioner submits that the petitioner was guest faculty and his acceptance of appointment was forwarded by the head of the Department. Accordingly, the petitioner's appointment cannot be termed as a fresh appointment. Not satisfied with the reply of the University, the petitioner sought information from the respondent University which was provided inter-alia; (i) only Jamia employees are expected to send their documents through proper channel. (ii) As a matter of policy fresh teachers who were not working in the respondent University were not allowed to join during vacations. (iii) There is no written policy about not joining by fresh teachers during vacations. It was verbal orders (Policy) of the then Vice-Chancellor not to allow the joining duty to fresh teachers during vacations. (iv) 48 teachers joined in different Departments during the summer vacations/ winter vacations during the years 2004-2012.

6. When the respondents rejected the petitioner's representation relating to the change of his date of joining, the petitioner filed WP(C) No. 558/2017 and same was withdrawn with liberty to file a fresh. Thereafter, the petitioner filed WP(C) 5846/2017 and same was disposed of vide order dated 26.10.2017 by passing order as under:-

“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 proponing 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 council 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.”

7. Accordingly, as directed by this Court, the petitioner made representation on 04.12.2017 and same was disposed of by the respondent by order dated 22.02.2018 stating therein as under:-

“4. Under the aforementioned facts and circumstances, it is revealed that Dr. Mohammad had accepted the offer of appointment and joined as Assistant Professor as per clause 14 mentioned in his appointment letter. The facts and circumstances also reveal that his request for notional

joining in the month of December, 2003 does not arise in any case when there is a clear cut stipulation in the terms and conditions of the appointment letter. Yet further, such a request for a notional joining date in advance of the date of actual joining is impermissible in law as it would equate to create a fiction in favour of an employee for a period for which the admittedly was not on the rolls of the institution nor rendered it any services. It could be understood if it was case if the employee had at the very outset protested about the alleged late joining done so, and having joined as the date mentioned in the appointment letter without any expression of inclination or a right to join at the earlier date, the employee cannot at a post-facto stage be permitted a notional advance joining date as Dr. Mohammad is seeking to do in the present case. As regards the aspect of certain persons being allowed to join during the period of vacations in the University, it needs to be noted that the University was shut during the said period of vacations and the usual academic activities were thus not being performed during the said period of vacations and the usual academic activities were thus not being performed during the said period. Therefore, as a matter of course, most prospective appointees, such as Dr. Mohammad, were asked to join when the University would reopen after the vacation. However, in certain cases where a concerned department centre or department of the University had need of the services of fresh appointee during the period of vacation, for instance for urgent research or on a continuing program, then the concerned Head of Department/Dean always had the discretion to so permit a person to join on an earlier date for the benefit of the University. Therefore, there is no element of discrimination or favouritism in the said step, which might be undertaken purely as per the administrative exigencies on the ground level. It once needs mention that Dr. Mohammad never expressed any inclination or expression of a right to join at an earlier date in response to the appointment letter dated 23.12.2003 which clearly mentioned his date of joining as 06.01.2004.

The stand being taken by Dr. Mohammad today is therefore an afterthought and is even otherwise not borne out from the rules and regulations of the University.”

8. Learned counsel for the petitioner submitted that the respondent University did not care for the direction issued by this Court and passed the order rejecting the petitioner’s representation by ignoring the same.

9. The respondents while passing the impugned order dated 22.02.2018 failed to observe the directions of this Court which is evident from the fact that the impugned order nowhere shows that the respondent University has formulated any clear cut policy about the joining of newly appointed teachers during vacations. The reference to clause 14 of the offer of appointment issued to the petitioner is made to show that the petitioner would join on 06.01.2004, therefore, his rights would crystallized upon his virtual joining and not on the date when the contract of employment stood concluded when offer was accepted and letter of appointment was issued in consequence settling the terms of employment inter-alia on following counts:-

*A. The petitioner would be governed by the **G. P. Fund cum Gratuity Scheme** for which he may indicate the rate of his subscription in accordance with provision of the above scheme.*

B. It the petitioner accepts the appointment on the above terms and conditions he was requested to intimate his acceptance to the undersigned through proper channel immediately and report his duty on 06.01.2004 positively.

10. The respondents while passing the impugned order did not disclose as to why clause 13 of his appointment letter was acted upon in terms of calling upon him to furnish the details of his nominees and also specify the quantum of subscription. Further, the respondents are again silent as to why P.F. A/C No. G-2818 and Employee I.D.: FM-2087 was allotted to the petitioner and why subsequently the same was cancelled.

11. The respondents miserably failed to answer Annexure P-5 of the instant petition which establishes that number of Professors, Readers and Lecturers joined from 2004 to 2008 during summer/winter vacations. The respondents while passing order made reference that at times if concerned Department of the University has need of services of fresh appointees during the period of vacations such as urgent research or a continue program then the concerned Head of the department/Dean has the discretion to permit the joining during the vacations. Firstly, this reference makes it clear that the respondent University does not have even today any policy in place and secondly, the respondents did not disclose as to how and for what

research/continuing program, 48 fresh appointees were permitted to join during vacations. Whereas, the petitioner's case could be justified for his continuing program or his assistance in research work as he was already part of the faculty as a guest lecturer before his regular appointment. Moreover, that petitioner never sought particular date of joining, however, the respondent University directs him to join on 06.01.2004. Whereas, petitioner accepted the offer of appointment on 24.12.2003.

12. Moreover, the respondents failed to answer as to why Dr. Azra Abidi, Dr. Fehmeeda khatoon and the petitioner were issued three different kinds of appointment letters with different conditions leading to discrimination and favoritism by permitting them to join. Despite the fact that, their appointments were made in pursuance of the recommendations giving by the same Executive Council Meeting held on 25.11.2003.

13. In the case of *Avinash Singh and Ors. vs. Union of India and Ors. decided on 26.05.2011 in W.P.(C) 5400/2010* whereby Double Bench of this Court has held that if appointment is by selection, seniority of the entire batch has to be reckoned with respect to the merit position obtained in the selection and not on the fortuitous circumstance on the date on which a person is made to join.

14. In case of *Inspector Rajendra Singh & Ors. vs. UOI & Ors.* decided by this Court on 27.03.2017 whereby held as under:-

“13. Having regard to the facts and circumstances of this case, where advertisements for recruitment to the posts of Sub Inspectors in CAPFs were issued in November, 2002, written examinations were held on 12.01.2003, Physical Efficiency Test had been held in or before April, 2003, and the petitioners appeared before the Medical Board between April, 2003, to June, 2003, and declared fit upon medical re-examination by Review Medical Board in December, 2003, it would be grossly unjust and arbitrary to deny the petitioners the benefit of the Old Pension Scheme, applicable at the time when the posts were advertised, only because of the fortuitous circumstance of their joining service after the enforcement of the New Pension Scheme, for reasons not attributable to them.”

15. On the other hand, learned counsel appearing on behalf of respondents submitted that the petitioner joined services on 06.01.2004 and it is true that initially the petitioner was asked to submit his nomination for provident fund and the reason for offering GPF deduction and allotment of PF account G-2818 was according to the appointment letter dated 21.12.2003. The respondent University notified the NPS a mandatory scheme on 15.09.2004 for all employees who joined services on or after 01.01.2004 as per the Government of India notification and since the petitioner had joined services on 06.01.2004, he was to be governed under the new NPS scheme as per the Government of India Notification. With respect to deduction of GPF in the

case of petitioner which continued upto January, 2005 along with other such employees till completion of the registration process to bring them all under the aegis of NPS, it is submitted that the NPS deduction under Tier-I @ 10% of pay was started from pay month of Feb-2005 after completing the mandatory process to bring all the people under the purview of NPS. The petitioner's GPF amount accumulated in excess of 10% of pay rate for NPS and was refunded back to petitioner. The respondent University issued a circular dated 03.08.2009 wherein it was asked to individual subscribers who joined respondent University on or after 01.01.2004 to submit the application Form of NPS for registration and allotment of Permanent Account Number (PRAN). Accordingly, the petitioner submitted NPS Application Form duly filled in on 18.08.2009 alongwith nomination form for NPS, allocating 100% share to his wife Shrimati Parveen Ansari. On the basis of this application Form, NSDL issued Permanent Account Number (PRAN) with No. 110010697180. The PAN CARD of NPS was delivered to him on 09.02.2010.

16. It is further submitted that the clauses of the Contract which has been mentioned by the Petitioner in his petition that he would be governed by GP Fund-cum-Pension-cum-Gratuity Scheme was a standard format printed and

typed before the implementation of the National Pension Scheme w.e.f. 01.01.2004. The petitioner joined on 06.01.2004 even though his Appointment Letter was issued on 23.12.2003, before the implementation of National Pension Scheme. After implementation of National Pension Scheme w.e.f. 01.01.2004, such clause mentioned in his appointment letter was obviously not applicable as the GPS Scheme was discontinued on 31.12.2003. Hence, the petitioner is not entitled to the benefit of G.P. fund cum Gratuity Scheme as it stood withdrawn after 31.12.2003.

17. Learned counsel appearing on behalf of respondents during the arguments submitted that in the representation filed by the petitioner it is stated that the respondent University had allowed 48 teachers to join in different Department during Summer Vacation/winter Vacation during the year 2004-2010 are correct to the extent that where the Academic/Research activities are going on and there is an exigency of official work pending, the respondent University allow the fresh recruits to join during vacation. Since the respondent joined on 06.01.2004 therefore, he is not eligible for Old Pension Scheme.

18. Learned counsel for the respondent further submits that the present petition is filed very late and hit by inordinate delay and latches. To

strengthen his argument, he relied upon the case of the *State of Tamil Nadu vs. Seshachalam* decided on 18.09.2007 in Appeal (Civil) No. 1938/2007 whereby held that delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Legitimate expectation is a part of the principles of natural justice. No fresh right can be created by invoking the doctrine of legitimate expectation.

19. In case of *Sanjay Kumar Thakur & Ors. vs. NDMC & Ors.* 236 (2017) DLT 163 (DB) whereby held that the Courts or judicial forums cannot legislate and substitute dates. It is well settled that the Courts do not interfere with cut-off date as these are matters of discretion and within the domain of the Executive or the Legislature. So long as the date specified is reasonable and not wayward with reference to the requirement of fixing a point of time etc, no interference by the Court is called for.

20. I have heard learned counsel for the parties and perused the material on record.

21. It is not in dispute that the petitioner had been working as guest faculty in the Department of Chemistry from 16.09.2002 to the academic session 2003-2004. During his engagement as guest faculty, he applied for

the post of lecturer in Department of Chemistry. The petitioner was selected by the Selection Committee and the Executive Counsel of the University approved the recommendation of the Selection Committee in its meeting dated 25.11.2003. Thereafter, the respondents issued the offer of appointment on 16.12.2003 to the petitioner and submitted his acceptance by his letter dated 18.12.2003. However, the respondents issued the appointment letter on 23.12.2003 calling upon the petitioner to report for duty on 06.01.2004. The said appointment letter in its clauses 13 & 14 had made clear that the petitioner will be governed by the G. P. Fund cum Gratuity Scheme. Accordingly, P.F. A/C No. G-2818 and the employee I.D.: FM-2087 was issued and in response of the same, the petitioner submitted his nomination on 21.09.2004 for the P.F. on the prescribed format given by the University.

22. It is also not in dispute that the respondent University for some time deducted the amount from the petitioner's salary. Thus, the respondents have been following the terms of appointment as contained in the letter of appointment. The petitioner accepted the appointment in question on the terms that G. P. Fund cum Gratuity Scheme will be applicable in case of the petitioner.

23. In the budget of 2003-04, the New Pension Scheme was introduced which was operationalized w.e.f 01.01.2004 and the announcement thereof was made through O.M. dated 13.11.2003 and approved by the Government of India on 23.08.2003. Subsequently, the petitioner was shifted from G. P. Fund cum Gratuity Scheme to New Pension Scheme on the ground that the petitioner had joined on 06.01.2004 and the New Pension Scheme is w.e.f. 01.01.2004. Thus, the petitioner comes under the New Pension Scheme which is operationalized w.e.f. 01.01.2004.

24. The fact remains that the offer of appointment letter was issued on 16.12.2003 and petitioner accepted the same on 18.12.2003. Thereafter, the respondents issued the appointment letter on 23.12.2003 with direction that the petitioner shall report for duty on 06.01.2004. This was not fault of the petitioner that he did join on 06.01.2004, however, that was as per the instructions of the respondents.

25. The petitioner made representation dated 16.11.2006 and requested for correction of his records in the University by changing the date of his joining to 24.12.2003 from 06.01.2004. In reply thereto, the University stated that there were winter vacations when offer of appointment was issued to the petitioner and the University re-opened after winter vacations

on 06.01.2004. It is further stated that the petitioner was not working in the University, therefore, the petitioner was allowed to join on reopening of the University i.e. on 06.01.2004, because as a matter of policy fresh teachers were not allowed to join during vacations. whereas, the petitioner was working as a Guest teacher in the Department of Chemistry from 16.09.2002 and thereafter, he applied for the post of lecturer in the same Department in response to an advertisement published by the respondents. It is not in dispute that the petitioner applied through proper channel, therefore, it cannot be said that the petitioner was not working in the Department.

26. Regarding the stand taken by the respondent University that as a matter of policy fresh teachers who were not working in the respondent University were not allowed to join during vacations. Whereas, the petitioner was working as a Guest Teacher but was not allowed to join on 24.12.2003 during winter vacation. It is also admitted case of the respondent University that there is no written policy about not joining by fresh teachers during vacations. It is admitted by the respondents that 48 teachers joined in different Departments during the summer vacations/ winter vacations during the years 2004-2012. In addition to above,

Annexure P-5 of the instant petition which establishes that number of Professors, Readers and Lecturers joined from 2004 to 2008 during summer/winter vacations. Therefore, there was no reason, not to allow the petitioner to join during winter vacations.

27. Similar issue came before the Double Bench of this Court in case of ***Avinash Singh and Ors. (Supra)*** whereby it is held that if appointment is by selection, seniority of the entire batch has to be reckoned with respect to the merit position obtained in the selection and not on the fortuitous circumstance on the date on which a person is made to join. Similar view was taken in case of ***Inspector Rajendra Singh & Ors. (Supra)***. Moreover, there is no explanation to order dated 22.02.2018 regarding the 48 teachers were allowed to join during winter/summer vacations and why the petitioner was not allowed to join during vacations when the petitioner was in service as a Guest Teacher in the same Department. Since, the petitioner submitted his acceptance on 18.12.2003 and appointment letter was issued on 23.12.2003, therefore, he is deemed in service w.e.f. date of appointment letter. Thus, the petitioner is to be governed by the G. P. Fund cum Gratuity Scheme.

28. This order shall be complied within six weeks.

29. The petition is, accordingly, allowed.

(SURESH KUMAR KAIT)
JUDGE

APRIL 23, 2019/rhc

