

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

+ *Reserved on: 23rd January, 2019*
Pronounced on: 31st January, 2019

LPA 633/2018 & CM No. 47473/2018 (stay)

DR ABDUL SATTAR

..... Appellant

Through: Mr. Sanjoy Ghose, Advocate with
Ms. Pratishtha Vij and Mr. Baburam,
Advocates.

versus

JAMIA MILLIA ISLAMIA

..... Respondent

Through: Mrs. Zeba Khair, Advocate with Mr.
Afzal Shah and Ms. Neelambika
Singh, Advocates.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J

1. The Appellant who is working as an Evaluator (Urdu) in the Urdu Correspondence Course, Centre for Distance & Open Learning (CDOL) in Jamia Millia Islamia (Respondent) has challenged the order passed by learned Single Judge in W.P.(C) 10550/2018 dismissing his writ petition and thus consequently denying the Appellant's request to continue in service till attainment of 65 years of age.

Factual Background

2. The Appellant was appointed to the post of Evaluator, Urdu Correspondence Course, in the pay scale of INR 5500-9000, on 22nd May,

2000. Initially, he was appointed on *ad hoc* basis for a period of 180 days w.e.f. the date of joining. Subsequently, it was extended from time to time. Pursuant to the recommendation by the Selection Committee, convened in terms of advertisement issued by the Respondent, Appellant was recommended for appointment to the post of Evaluator, Urdu Correspondence Course on regular basis. He joined the said post on 14th December, 2004, pursuant⁵ to the letter of appointment issued on 8th December, 2004.

3. According to the Appellant, since he was possessing the requisite qualifications of a Lecturer i.e. Masters' Degree in Urdu and a Ph.D, he made a representation dated 22nd April, 2009 to the Vice Chancellor of the Respondent, requesting re-designation as a Lecturer in the Urdu Correspondence Course at par with the Instructor. The Appellant avers that his representation was considered and approved. However, no formal orders were issued in his favour.

4. On 9th November, 2017, the Respondent issued a notification approving the amendment of Regulation XXXVII captioned 'Age of Retirement of Staff' whereby the retirement age from the service of Respondent was increased to the age of 65 years. The Respondents then vide Office Order dated 16th February, 2018 issued a list of retiring employees, wherein the Appellant was shown at Serial No. 5 and against his name, the age of retirement was indicated to be on 31st October, 2018 i.e. upon attainment of 60 years of age.

5. The Appellant is aggrieved with the recording of retirement age of 60 years on the ground that the said age is applicable for “non-academic” posts. He made a representation dated 22nd January, 2018 to the Respondent and requested for re-fixation of the date of retirement, contending that the post of Evaluator is an Academic Teaching Post with the retirement age of 65 years. The Appellant claims that his date of retirement should be 31st October, 2023 instead of 30th October, 2018 as specified by the Respondent. The Respondents did not accept his representation and vide letter dated 22nd February, 2018, requested the Appellant to fill in the requisite application forms for settlement of his retiral benefits. This was followed by further representations by the Appellant. The Respondents ultimately issued an office order dated 16th February, 2018 and denied the Appellant’s request to continue in the service for a period of another 5 years. Aggrieved by this denial, the Appellant filed Writ Petition (Civil) 3782/2018 before this Court. The said petition was disposed of vide order dated 17th April, 2018 whereby the Respondents were directed to dispose of his representation dated 5th March, 2018 and to reconsider the impugned order dated 16th February, 2018. In compliance with the orders of this Court, Respondents then vide order dated 28th May, 2018 rejected the Appellant’s representation.

6. Aggrieved with the Respondent’s stand, the Petitioner preferred another petition before this Court being W.P.(C) No. 10550/2018.

7. The said writ petition was dismissed by learned Single Judge vide impugned order dated 31st October, 2018, which is assailed in the present appeal under Clause 10 of the Letters Patent Appeal.

Proceedings before the Learned Single Judge

8. The learned Single Judge has held that the post of Evaluator is separate and distinct from the post of Lecturer/Teacher. The nature of duties and responsibilities and functions are not at par with the teaching staff. The learned Single Judge has further held that since the notification enhancing the age of retirement to 65 years is applicable only to teachers, Appellant would not be entitled to claim increase in his age of retirement.

9. The learned Single Judge has also examined the terms of appointment of the Appellant, the nature of the functions, duties and assignments of an Evaluator and has come to the conclusion that Appellant as an Evaluator is not involved in any teaching work and therefore would not be entitled to enhancement of his retirement age.

Submissions of the Parties

10. The Court has heard the submissions of Mr. Ghose, learned counsel appearing on behalf of the Appellant and Mrs. Zeba Khair, learned counsel appearing on behalf of the Respondent.

11. Mr. Ghose has argued that the learned Single Judge has erred by not taking into consideration the attendance registers that were placed on record to indicate that the Appellant was performing academic/teaching duties. The Appellant had been imparting education to the students and the same could be proved by a perusal of the records of the Respondent.

12. He further urged that the approach of the learned Single Judge is erroneous, as there is, in fact, no distinction between “teacher” and “teaching staff” and therefore the basis for rejecting Appellant’s request by linking him to “teaching staff” was incorrect. He further argued that the determinative factor of comparison of the pay scale for ascertaining his entitlement was erroneous. The Selection and Training Committee has prescribed academic qualification of Ph. D for the post of Evaluator only for the reason that the Appellant had been performing duties involving teaching/academic role.

13. The learned counsel for the Respondent, on the other hand, has argued that the post of Evaluator, Urdu Correspondence Course was specifically created by the Finance Committee of the Respondent as a “non-teaching” post and this decision was also endorsed by Executive Counsel. She submitted that Urdu Correspondence Course is a certified course of the Respondent-University and the prospectus and syllabus for the said course makes it evident that it is a distance learning course and does not involve any active classroom teaching. She further submitted that the work performed by the Appellant as Evaluator was limited to evaluation of assignments submitted by students undertaking the said course, coordinating distribution of study material and issuance of certificates on completion of the course and there was no classroom teaching or advance study involved. Further, she also referred to several documents enclosed with the reply to submit that the attendance sheets of the counselling session of BA programme students were prepared/made on a special occasion when Appellant was invited by the Centre for Distance and Open Learning, Jamia

Millia Islamia to take counselling classes for students of 1st year BA Programme of CDOL and for this work, the Appellant had received separate allowance. The fact that counselling classes were conducted by the Appellant for BA Programme course of CDOL, does not mean that Appellant was engaged in occasional “teaching” as part of his employment as an Evaluator.

Analysis and Findings

14. It would be essential to first note that the notification enhancing the age of retirement of the staff of the Respondent-University on the basis of which the Appellant has claimed enhancement of his retirement age. The same reads as under:-

“No. 03/L&O/RO/JMI/2017

November 9, 2017

NOTIFICATION

This is to certify for information of all concerned that the Executive Council in its Meeting held on 27.09.2017 vide its Resolution No. EC-2017 (IV) 3:32 has approved the amendment in 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);15) The amended Regulation XXXVII captioned “Age of Retirement of Staff” as approved would now be read as shown in the Annexure.

Sd/-
(A.P. Siddiqui) IPS

Registrar

ANNEXURE

Amendment in Regulation XXXVII captioned “Age of Retirement of Staff” vide E.C. Resolution No. EC-2017(IV) Reso-3.32 dated 27.09.2017

**Amendment in Para 1
of
Regulation XXXVII
“AGE OF RETIREMENT OF STAFF”**

Para No.	Existing	Amended
1	All <u>the whole time teachers</u> of the Jamia shall retire from the service of the Jamia with effect from the date on which they attain the age of 60 years. The Majlis-i-Muntazimah, on the recommendation of the Shaikh-ul-Jamia, may however, in the interest of the Jamia, re-employ a teacher for such period as it may deem fit and on such terms and conditions as it may prescribe. Provided that: (1) no teacher shall remain in the Jamia’s service beyond the age of 65 years; and (2) no administrative	1. All <u>the whole time teachers</u> of the Jamia shall retire from the service of the Jamia with effect from the date on which they attain the age of 65 years. The Majlis-i-Muntazimah, on the recommendation of..... as it may prescribe. Provided that; (1) no teacher shall remain in the Jamia’s service beyond the age of 70 years; and (2)-----NO CHANGE-

	responsibility will be given to a re-employed employee.	
--	---	--

15. A plain reading of the aforesaid notification indicates that the age of superannuation has been enhanced in respect of “teachers”. The language of the amended Regulation XXXVII also uses the expression “whole time teachers of Jamia”. Therefore, there cannot be any doubt that the notification and the amendment to the Regulation, are applicable to the teachers of the Respondent-University.

16. The question therefore that arises for our consideration is whether the post held by the Appellant would be eligible to fall under the category of "teachers". Concededly, Appellant is holding the post of Evaluator. His appointment letter would throw light on the terms of the appointment and also the nature of duties and functions performed by the Appellant as an Evaluator. The said letter of appointment inter alia reads as under:-

“Rectt.Sec.I/RO/JMI/Apptt-04/2004

Date: 08.12.2004

Dear Sir,

With reference to your application dated 07.01.2004 for the post of Evaluator (Urdu), I am glad to inform you that on the recommendation of the Selection Committee held on 07.12.2004, the Vice-Chancellor JMI have appointed you on the post of Evaluator (Urdu) in the Urdu Correspondence Course Centre for Distance and Open Learning-CDOL, on a basic pay of Rs. 5500/- per month + three advance increments in the pay scale of Rs. 5500-9000 plus usual allowances at the rates admissible under

the rules to Jamia employees of your category on the following terms & conditions:

1. The appointment is on probation. This will confer no title on you to continue on a long term basis.
2. The Executive Council, however, reserve 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 allowance for the period of notice or the unexpired portion thereof.
3. Your services will be governed by the Jamia's Act, Statutes & Ordinances as amended from time to time.
4. Your conditions of service shall be those embodied in the agreement of service, as Prescribed by the Jamia and you shall have to sign the agreement before you enter upon your duties or as soon as possible thereafter.
5. You are required to produce original certificates as proof of your qualifications and date of birth, experience as well as evidence of research and published work claimed by you along with the attested copies of all the certificates, degrees, diplomas and mark-sheets etc to the undersigned immediately, so that the undersigned could submit the report of the facts of such verification to the Vice-Chancellor before the date you take the charge of the above post, failing which you will not be allowed to join the post.
6. The appointment will be upto one year in the first instance which may be terminated at any time by giving one months' notice by either side without assigning any reason.
7. The Shaikhul Jamia (Vice-Chancellor) may when deems it necessary suspend you on the ground of mis-conduct.
8. You will have to submit a discharge certificate from your present employer, if any.
9. You will not cause any damage to the property of the Jamia and will have to strictly observe the Code of Conduct (copy attached).
10. The place of your duty will be the Urdu Correspondence Course-Centre for Distance and Open Learning-CDOL, Jamia Millia Islamia at present but you may be required to serve in any department/Institution of Jamia.

11. If any declaration given or information furnished by you is proved to be false or it is found that you have suppressed any material information, you will be liable to removal from service and such further action as Jamia may deem necessary.
12. You are also required to submit your H.R.A claim in the prescribed proforma, available in the Accounts Office, at the time of joining duty in case you want to claim the House Rent Allowance as per Jamia rules.
13. You will be governed by the G.P. Fund-cum-pension-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 yourself for duty within 15 days from the date of issue of this letter. If no reply is received or if you fail to report for duty, after completing the formalities mentioned above, by the prescribed date, the offer will be deemed as cancelled.
15. No. traveling or any other allowance will be paid for joining the post.”

17. The appointment letter shows that the Appellant’s appointment as Evaluator (Urdu) is for the Urdu Correspondence Course-Centre for Distance and Open Learning. UCC is Urdu Correspondence Course introduced by the Respondent-University as a certificate course of one year through correspondence. We are informed that this course was introduced after receiving approval from the University Grants Commission (UGC) with the aim of promoting and disseminating Urdu language through the medium of English and Hindi language through correspondence mode. The structure of UCC is such that the students enrolled in the course do not get any classroom teaching as it is a distance learning course. Therefore, the

Appellant-Evaluator (Urdu) was certainly not performing the functions of a teacher.

18. Much emphasis has been laid by Mr. Ghose on the fact that the Appellant as an Evaluator (UCC) has been taking classes of the students and therefore he is entitled to the benefit extended to the teachers of the Respondent/University. While issuing notice on the Appeal, vide order dated 16th November, 2018, we had directed the Appellant to file an additional affidavit placing on record the documents to show that the Appellant was teaching even in the earlier academic session i.e. 2016-17. Respondents were also permitted to file an affidavit in reply confirming whether the Appellant was indeed teaching in earlier academic sessions as well. In pursuance to this order, both the parties filed affidavits. Appellant has placed on record certain attendance sheets along with the affidavit.

19. It has been explained by the Respondent that the attendance sheets relied upon by the Appellant are in respect of counselling session of BA Programme of students of the Respondent-Centre for Distance and Open Learning. The UCC, we are informed, was merged with CDOL, and since then, is under the administrative control of CDOL. However, the BA Programme in CDOL and UCC are two separate and distinct courses. BA Programme Course in CDOL is a correspondence course and as a part of curriculum, counselling classes are held on weekends which may be voluntarily attended by the students of the course for clearing their doubts. The Respondent-University has explained that the attendance sheets annexed with the additional affidavit of the Appellant are in respect of above

stated counselling classes for which he was paid a separate allowance of Rs. 1000/- for each of these classes. The receipt of payments have also been brought on record by the Respondent. According to the Respondent these six classes were by way of special assignment for BA Programme Course and do not in any manner become part of his regular duties as an Evaluator of UCC.

20. Therefore, it emerges that the Appellant was essentially performing the functions of non-academic character and was not engaged in taking classes for the students of UCC as he has claimed. Merely because Appellant, at some stage, took counselling classes for BA Programme Course of CDOL, it cannot be understood to mean that he was performing teaching functions or that the post of an Evaluator is akin to the post of a teacher.

21. It would be apposite at this stage, to take note of the decision of this Court in *Amar Singh Chauhan v Govt. Of NCT of Delhi*, (2016) 230 DLT 94 (DB), wherein the petitioner who was working as a Laboratory Assistant was claiming parity with 'teachers' for the benefit of post retirement re-employment. It was held that Laboratory Assistant is not at par and cannot be equated with teachers/teaching staff and the contention that the petitioner at the request of the principal or superior had taken classes, though he was a laboratory assistant was noted and rejected as this would not have the effect of the petitioner being appointed and given the status of a teacher. In another case of *Sat Narain v Directorate of Education* in W.P.(C) No. 5374/2013 decided on 29th August, 2013, a similar view was taken by this Court, holding that “teachers are the ones who teach the three R's in a classroom”.

The case of *S. Dildar Haider v. Jamia Milia Islamia MANU/DE/8920/2006* which has been relied on by the Appellant is distinguishable from the present case. In the said case, the Petitioner was appointed on the post of Instructor and was performing teaching work. Further, the notification under consideration in that case extended the benefit of increase in age of superannuation from 60 to 62 years to other university employees who were being treated at par with the teachers. However, in the present case, as already noted above, the Appellant is not involved in teaching activities and the notification dated 9th November 2017 increasing the age of superannuation from 62 to 65 years is specifically applicable to “teachers”.

22. We have also perused the letter dated 31st May, 2018, categorically listing out the functions and activities of Evaluator performed by the Appellant. Nature of such functions involves evaluation of assignments, preparation of certificates, maintenance of attendance registers and other documents. Looking at the nature of duties and responsibilities, it cannot be held that the post of Evaluator would be entitled to the benefits of the amendment in the Regulation.

23. The learned Single Judge has also examined the UGC Regulations for the appointment of teachers and academic staff in the University and College and has made a comparison of the qualifications for the appointment of teachers and academic staff with those applicable to the post of Evaluator. He has noted that the career progression and the pay scales for the post of the Evaluator are distinct from those of the teachers. While, one singular distinction may not be enough to distinguish the two posts, however, in the

present case all the aspects including the mode of recruitment, notifications, nature of duties and responsibilities, pay scale are found to be distinct. Appellant has not made any submission contradicting the above aspect. Moreover, the main plank of the arguments of the Appellants that he was performing teaching functions is found to be incorrect on facts. In view of the above discussions, there is no ground to interfere with the judgment of the learned Single Judge.

24. The appeal is accordingly dismissed along with the pending application. Parties are left to bear their own cost.

SANJEEV NARULA, J

S. MURALIDHAR, J

JANUARY 31, 2019

ss