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

+ LPA 101/2020

JAMIA MILLIA ISLAMIA UNIVERSITY & ORS Appellants

Through: Mr.Fuzail Ahmad Ayubi,
Mr.S.Ahmad and Mr.Ibad Mushtaq,
Advocates.

versus

MOHD MAHTAB IBRAHIMI Respondent

Through: Ms.Indrani Ghose, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **19.02.2020**

CAV 162/2020

1. Learned counsel for the caveator has appeared.
2. Accordingly, the caveat stands discharged.

CM APPL. 6680/2020 (delay in filing)

3. Issue notice. Learned counsel for the respondent accepts notice on this application.
4. By this application the applicant seeks condonation of delay of 29 days in filing the appeal. For the reasons stated in the application, the delay is condoned.

5. The application stands disposed of in the aforesaid terms.

CM APPL. 6682/2020 (for additional documents)

6. Issue notice. Learned counsel for the respondent accepts notice on this application.

7. By way of this application, the applicant seeks to place on record several documents as Annexures A-5, A-6 and A-7 which could not form part of the writ proceedings.

8. Having heard learned counsels, we allow this application and take the documents on record.

9. The application stands disposed of.

LPA 101/2020 & CM APPL. 6681/2020 (stay)

10. The appellant has preferred this appeal, to assail the order dated 10.12.2019 passed by the learned single judge in W.P.(C) No. 3092/2017. Vide the impugned order the learned single judge has allowed the writ petition preferred by the respondent/writ petitioner, who had assailed the communication dated 22.12.2011, reducing the pay scale payable to the respondent in terms of the advertisement and the offer of appointment made to him of Rs. 9,300 - 34,800 with grade pay of Rs. 4,200. The respondent, in response to the advertisement issued by the appellant for the post of Senior Lab Assistant dated 10.08.2011, made his application and was selected for the said post. The advertisement had advertised the said post of Senior Lab Assistant in the pay scale of Rs. 9300-34,800 with grade pay of Rs. 4200.

The respondent joined the said post on 14.12.2011 and was issued an appointment letter, wherein the pay scale admissible to him was described as Rs. 9300-34,800 with grade pay of Rs. 4200. After the respondent had joined the said post, the appellant sought to issue a corrigendum, downgrading the pay scale admissible to the respondent to Rs. 5200- 20,200 with grade pay of Rs. 2800 on the premise that the said pay scale had been sanctioned by the University Grants Commission ("UGC") for Senior Lab Assistants. The respondent made representations against the said downgrading of his pay scale, which was rejected by the appellant on 16.02.2012 and, thereafter, the respondent was confirmed for the post of Senior Lab Assistant. On 04.03.2016, the appellants held a meeting to reconsider the representation of the respondent and observed that the pay scale of Rs. 9300-34,800 with grade pay of Rs. 4200 had been inadvertently mentioned in the advertisement, whereas the core pay scale of Senior Lab Assistant is Rs.5,200- 20,200 and grade pay of Rs.2800/- as per the post sanctioned by the UGC. This decision of the Establishment Branch was endorsed by the Executive Council of the appellant in its meeting held on 28.06.2011. Consequently, the respondent preferred the aforesaid writ petition to assail the decision taken by the appellants. The learned single judge allowed the said writ petition. The reasoning found in the impugned order reads as follows:

“Undisputedly, the subject advertisement issued by the University, invited applications to the subject post with the pay scale/pay band of Rs.9300-34800 with AGP of Rs.4200 and to that effect only, it issued the offer of appointment that was so accepted by the petitioner. It does not require any elaboration that with the acceptance of the offer of appointment, there was a

concluded contract of employment, which could not be varied unilaterally by the University by way of the purported corrigendum dated 22.12.2011. Not only that, as per its own communication dated 16.06.1997, the subject post carried the pay scale of Rs.1640-2900, which with the successive revisions as per the 5th and 6th Pay Commissions was Rs.9300-34800 with grade pay of Rs.2400 and was so applicable, when the subject advertisement came to be issued. The recommendations of the pay commissions have a statutory effect. Even otherwise, it is not the plea of the University that it did not follow any revision of pay scales, as per the pay commissions. Any contention raised to the contrary is therefore, wholly meritless.

For the foregoing reasons, the petition is granted. Taking into account the totality of facts and circumstances, the corrigendum dated 22.12.2011 is quashed and the writ of mandamus is issued to the University - Jamia Millia Islamia to pay to the petitioner the arrears of pay and allowances, if any, within eight weeks from today, failing which, the arrears shall carry interest @ 8% p.a.”

11. The submission of learned counsel for the appellant, by reference to the additional documents placed on record is that the appellant had taken a decision to grant the pay scale of Rs.1640- 2900 only to the existing incumbents on a personal basis, vide the decision of the Executive Council in its meeting held on 08.01.1997. He submits that so far as Senior Lab Assistants are concerned, the posts were advertised; taking note of the UGC approved pay scales which was Rs.4500-7000. In this regard, reference is made to the communication dated 09.08.2001 addressed by the appellant to the UGC. The UGC, vide communication dated 06.04.2005 granted approval for filling up non teaching posts in the appellant-University including for the post of Senior Lab Assistant in the core pay scale of Rs.4500-7000.

12. Learned counsel for the appellant has drawn our attention to the pay revision table to submit that the revised pay for Rs.4500-7000 corresponds to posts- Grade 'S-8' which in the pre revised scale was Rs.1400-2300. It is also pointed out that the pay scale 'S-8' of Rs.4500-7000 was revised to 5400-20,200 under the 6th Pay Commission recommendations. Whereas the pay scale of Rs. 5500-9000 and pay scale 'S-10' was revised to Rs. 9300-34,800/-.

13. Having heard the learned counsel for the appellant and perused the record as well as the impugned order, we are not inclined to interfere with the impugned order. No doubt, it appears that the appellant could have issued the advertisement to recruit Senior Lab Assistant on the pay scale of Rs.5400-20200. However, having advertised the said post on the higher pay scale of Rs. 9300-34,800 in response to which the respondent applied and got appointed, the appellant in our view cannot retract and reduce his pay scale, post his appointment. There is no statutory bar that the Senior Lab Assistant could not have been appointed on the higher pay scale of Rs.9300-34,800. Pertinently, the existing technical staff was given the revised pay scale Rs.1640-2900 which corresponds to revised pay scale of 9300-34,800. Therefore, it is not that as if none of the Senior Lab Assistants in the appellant-University are drawing the said pay scale.

14. We, therefore, dismiss the appeal while making it clear that relief granted to the respondent is in the peculiar facts of the present case and the same shall not be cited as the precedent for claiming similar relief in other cases. The arrears payable to the respondent be paid within eight weeks from today.

15. The appeal and the application are accordingly disposed of.

VIPIN SANGHI, J

SANJEEV NARULA, J

FEBRUARY 19, 2020

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