

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: August 18, 2021

+ W.P.(C) 8532/2019, CM Nos. 35239/2019, 44194/2019, 52378/2019,
5316/2020, 5317/2020, 27998/2020

PROF. SABIHA HUSSAIN Petitioner
versus

JAMIA MILLIA ISLAMIA AND ORS. Respondents

AND

+ CONT.CAS(C) 602/2020
PROF. SABIHA HUSSAIN Petitioner
versus

JAMIA MILLIA ISLAMIA THROUGH: ITS VICE CHANCELLOR
PROF. NAJMA AKHTAR & ANR. Respondents

AND

+ W.P.(C) 7864/2020, CM No. 25800/2020
DR. SURAIYA TABASSUM Petitioner
versus

JAMIA MILLIA ISLAMIA UNIVERSITY THROUGH: THE VICE
CHANCELLOR & ORS. Respondents

AND

+ W.P.(C) 7928/2020, CM No. 25930/2020
DR. MEHER FATIMA HUSSAIN Petitioner
versus

JAMIA MILLIA ISLAMIA THROUGH: ITS VICE CHANCELLOR
& ORS. Respondents

AND

+ W.P.(C) 8454/2020, CM No. 27309/2020
DR. NABILA SADIQ Petitioner
versus

JAMIA MILLIA ISLAMIA & ORS. Respondents

AND

+ W.P.(C) 10702/2020
DR. FIRDOUS AZMAT SIDDIQUI
versus

..... Petitioner

JAMIA MILLIA ISLAMIA & ORS.

..... Respondents

Present:

Mr. Ajit Kumar Sinha, Sr. Adv., Mr. Salman Khurshid, Sr. Adv., Mr. Srijan Sinha, Ms. Parul Dhurvey, Mr. Barun Kumar Sinha, Ms. Pratibha Sinha, Mr. Sudarshan Rajan, Mr. Hitain Bajaj, Mr. Anil Nauriya, Ms. Sumita Hazarika, Mr. Mohinder J. S. Rupal and Ms. V. Bhawani, Advs. for petitioners.

Mr. Fuzail Ahmad Ayyubi, Standing Counsel, Mr. Pritish Sabharwal, Asst. SC, Mr. Apoorv Kurup, CGSC, Ms. Nidhi Mittal, Adv., Mr. Farman Ali, Sr. Panel Counsel and Mr. Athar Raza Farooquei, Adv. for respondents.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. At the outset I may state, vide this common order I shall decide, **CONT. CAS(C) 602/2020, W.P.(C) 8532/2019, W.P.(C) 8454/2020, W.P.(C) 7864/2020, W.P.(C) 7928/2020, W.P.(C) 10702/2020** and respective applications connected therewith, as the issue raised in these petitions is similar and with identical facts, but narrated separately.

W.P.(C) 8532/2019

2. This Writ Petition has been filed with the following prayers:

“In light of the submissions made hereinabove the Petitioner humbly pray that this Hon’ble Court may be pleased to:-

a. Issue a writ of Mandamus or any other appropriate writ, order or direction directing the Respondent to regularise the Services of the Petitioner at the post of Professor/ Director and grant all consequential benefits in favour of the Petitioner;

b. Issue a writ of Mandamus or any other appropriate writ order or direction to quash / set aside the letter/order dated 01.07.2019 appointing Respondent No. 3 as Professor in Charge in place of Petitioner;

c. Pass any other and such further order(s) in favor of the Petitioner as this Hon’ble Court may deem fit to pass in the interest of justice.”

3. As per the petitioner the respondent University is a Central University which is fully funded by the Ministry of Human Resource Development, Government of India, and is governed by its own Act, Statute and Ordinances. On February 16, 2000, the University Grants Commission (‘UGC’, for short and respondent no. 5 herein) approved the establishment of the Sarojini Naidu Women’s Studies Centre (‘Centre’, for short) under the IX Plan with the respondent University. The petitioner who was earlier working as a Professor at Dr. K.R. Narayanan Centre for Dalit and Minorities Studies had, pursuant to an

advertisement issued by the University on July 12, 2016, applied for the post of Director in the Centre. The petitioner was duly selected for the post and the selection was approved by the Executive Council ('EC', for short) of the respondent University vide the minutes dated March 10, 2017. Subsequently, she joined the tenure post of Professor/Director of the Centre for the period of the UGC's XII Plan or till the Scheme lasts.

4. The respondent University in its letters dated April 27, 2017 and July 31, 2018 requested the respondent no. 5/UGC to merge all teaching positions of the Centre under the XII Plan into Non-Plan (maintenance grant) of the respondent University. In response to the respondent University's letters, the respondent no. 5/ UGC vide its letter dated April 18, 2019 granted approval for merger of teaching posts under the Plan into Regular Establishment Budget of the respondent University. The respondent no.5/ UGC vide its letter dated June 25, 2019 also clarified that the services of the persons appointed through proper selection procedure/committee and who are fulfilling all educational and other qualification as prescribed in the Regulations at the time, and whose appointments were approved by the statutory bodies, "may" be merged under Regular Establishment Budget of the respondent University. Pursuant thereto the Jamia Teachers Association ('JTA', for short) vide its letter dated June 07, 2019 sought clarification from the UGC as to whether the merger of the posts would mean that the services of the incumbents are confirmed or their services be terminated and the posts be advertised afresh. It is the case of the petitioner

that as no response was received and pursuant to the letter of the UGC granting approval, she requested the respondent University vide letter dated June 26, 2019 for confirmation of her services. The Respondent University instead of regularising the services of the petitioner as Director initiated a Disciplinary Inquiry against the petitioner and in that regard a show cause notice dated June 28, 2019 was issued and after two days, i.e., on July 01, 2019 appointed respondent no. 3 as the Professor-in-Charge of the Centre, which is in effect the position of Director, occupied by the petitioner. It is the stand of the petitioner that she denied the allegations made against her, in her reply dated July 04, 2019. It was expected of the University to drop the allegations and regularise her services.

5. A counter affidavit has been duly filed by the respondent University wherein it is stated that the appointment of the petitioner was tenure based and remained valid only till the XII Plan/Scheme period, which according to the respondent University is evident from a perusal of the appointment letter of the petitioner. It is stated in the counter affidavit that consequent to the letter dated April 18, 2019 of respondent no. 5/UGC, the expenditure incurred on the salary of the faculties in the Centre was merged into the Non-Plan (Maintenance Grant) and the teaching positions of the Centre were merged into the Regular Establishment Budget of the respondent University, meaning the Centre was no longer Plan based and the teaching positions came under regular service of the respondent University. The respondent University through the EC has taken a decision on

May 02, 2019 to fill the existing posts by way of proper selection committee, after an advertisement calling for applications on an All-India basis is issued. It is the stand of the respondent University that the UGC has vide letter dated June 25, 2019, by stating that the existing persons (petitioners herein) appointed through selection committee “*may*” be considered to be absorbed to the Regular Establishment budget of the respondent University, has left it to the respondent University to evolve the procedure/manner of appointment. In other words, it was not the directive of the UGC and as such the respondent University is not bound by the same. On the show cause notice issued to the petitioner, it is stated that a certain video came to the knowledge of the Vice Chancellor related to the Centre, from which it is seen that some outsiders were handling official documents and files with the office staff. These outsiders were spouses of three faculty members including the petitioner. A reference was made to a Committee constituted under the Chairmanship of a retired High Court Judge to look into both the aspects of eligibility parameters in light of the approval of the UGC and the misconduct of certain members of the Centre. It is stated, pending fairness in inquiry, the charge of the Centre was accorded to respondent no. 3. It is also stated that the petitioner approached this Court at a time when the Committee had barely initiated the proceedings of the Inquiry. It is also stated the Committee had after recording the statements had given its report.

6. It is the case of the respondent University that

appointment on a tenure post comes to an end with efflux of time, as stated in the appointment letter(s) sent to the petitioner. It is further stated that the tenure post against which the petitioner was appointed stood abolished w.e.f. May 02, 2019, when the EC approved and adopted the merger of posts under XII Plan Scheme into Regular Establishment of the respondent University in light of the respondent no. 5/UGC letter dated April 18, 2019.

7. A counter affidavit has been filed by the respondent no.5/UGC, wherein they have referred to the request of the University vide their letter dated April 27, 2017 that the expenditure to be incurred on the salaries for faculty positions of the Centre be merged into the Non-Plan of the University; which request was approved and accordingly they have vide letter dated April 18, 2019 conveyed to the University its approval for merging all the teaching posts sanctioned by the UGC into the Regular Establishment budget of the University.

8. A short counter affidavit has been filed by respondent No.3 as well, wherein he has stated that, temporary charge as the Professor-in-Charge of the Centre was given to him vide office order dated July 01, 2019, during the pendency of the inquiry against the petitioner and this Court vide order dated August 08, 2019 has reinstated the petitioner.

9. A rejoinder has been duly filed by the petitioner to the counter affidavit by the respondent University wherein, inter alia, the petitioner has pointed out that seven Centers and Faculties of the University were converted from Plan to Non-Plan and the incumbents therein were absorbed.

W.P.(C) 7864/2020

10. This Writ Petition has been filed with the following prayers:-

- (i) *To issue Writ of certiorari quashing the impugned Rolling Advertisement No. 1/2020-21 dated 18.09.2020 issued by the Respondent No.1 & No.2 for the post of Assistant Professor in Sarojini Naidu Centre for Women's Studies in Jamia Millia Islamia University.*
- (ii) (i) *To pass Writ of Mandamus commanding the Respondents to confirm the service of the Petitioner as Assistant Professor in the Sarojini Naidu Centre for Women's Studies in respondent No.1 University pursuant to merger of the post of Assistant Professor and other Teaching staff of Sarojini Naidu Centre for Women's Studies Centre into regular establishment of Jamia Millia Islamia with all consequent benefits.*
- (iii) *Or pass such other or further orders as this Hon'ble court may deem fit & proper in the facts and circumstances of the case.*

11. The petitioner herein was appointed to the tenure post of Assistant Professor in the Centre in 2016 after being duly selected by the Selection Committee constituted by the respondent University as per University Rules. The selection process was initiated in conformity with the eligibility criteria prescribed by the University read with UGC Regulations.

12. It is the case of the petitioner herein that with the merger of the Centre into Regular Establishment of the University, her services are liable to be regularised. However, despite the petitioner's request in this regard vide letter dated September 26, 2019 to the respondent University and the clarification issued by the UGC vide letter dated June 25, 2019, in response to the letter

dated June 07, 2019 by the JTA, the respondent University failed to regularise her services. In order to vacate the post of the petitioner, the respondent University issued Rolling Advertisement No. 01/2020-21 dated September 18, 2019 inviting applications to various teaching positions, including the post on which the petitioner is working.

13. The petitioner claims that she is eligible for regularisation on the post of Assistant Professor as she is highly qualified and has twenty-one years of professional experience encompassing Academics, Writing and Development work primarily on women and gender issues.

14. That apart, the eligibility criteria provided for recruitment of the petitioner in the year 2016 was almost similar to the criteria provided in the impugned advertisement. The petitioner claims that therefore, the impugned advertisement is published with the malafide intention to deprive her from permanency on the post of Assistant Professor.

15. When the petition was listed on October 19, 2020, before this Court a statement was made by Mr. Ayyubi, learned Counsel appearing for the University that the counter affidavit filed by the University to W.P.(C) 8532/2019 shall be adopted and be read as reply to this petition as well. In view of the statement made by Mr. Ayyubi, I may state, as the stand of the University is same as in W.P.(C) 8532/2019, the same requires no reiteration.

16. Counter Affidavit has been filed by the respondent no. 3-UGC wherein the stand as taken in its affidavit W.P.(C) 8532/2019 has been reiterated.

17. A rejoinder has been duly filed by the petitioner wherein she has contended that the UGC letter dated June 25, 2019 cannot be said to be a directive, as the same was issued in continuation of its earlier letter dated April 18, 2019, whereby all faculty positions of the Centre were merged into Regular Establishment budget of the respondent University. That apart, the letter dated June 25, 2019 was issued as a “clarification” to the letter dated June 07, 2019 by the JTA, regarding the issue of confirmation of incumbent teaching staff.

W.P.(C) 7928/2020

18. This petition has been filed with the following prayers:-

- “a) Allow the present Writ Petition and grant Writ of Mandamus or any other Writ against the Respondent No. 1 and quash the Advertisement dated 18.09.2020 being Annexure P-I hereto.*
- b) Direct the Respondent no. 1 to confirm the service of the petitioner on post of Associate Professor in SNCWS, JMI with effect from the Petitioner's date of joining i.e. 08.12.2016 (Forenoon) with all consequential benefits including extending the benefits of 7 CPC and release of arrears.*
- c) Quash/set aside the Show cause notice dated 28.06.2019 and consequent decisions/ orders of the Respondent No. 1 and the consequent disciplinary proceedings initiated against the Petitioner.*
- d) Direct the Respondent No. 1 to maintain status quo in the employment status of the Petitioner during the pendency of the Writ Petition.*
- e) Stay the operation of the advertisement dated 18.09.2020 issued by the Respondent no. 1 till the pendency of the present Writ Petition.*
- f) Pass such other and further orders as this Hon'ble Court may deem fit, just and proper in the present circumstances of the case in favour.”*

19. The case of the Petitioner is that she was appointed on the post of Lecturer on probation basis in August 2008, having been selected through a duly constituted Selection Committee in pursuance of the respondent University's Regular Advertisement ADVT. NO. 01/2008-09 dated 01 May, 2008 in the "*Programme for the Study of Social Exclusion and Inclusive Policy*" at the Dr. K.R. Narayanan Centre for Dalit and Minorities Studies. The appointment of the petitioner was duly approved by the respondent University's statutory body, i.e., the EC, vide Resolution No. 2.7 in its meeting held on September 09, 2008. Later, an Agreement of Service was also signed between the respondent University and the petitioner on August 28, 2008. The petitioner was then selected through a proper Selection Committee to the post of Associate Professor at the Centre vide Appointment Letter dated December 07, 2016.

20. Pursuant to the letter of the respondent no. 2- UGC dated April 18, 2019 approving the merger of faculty positions into Regular Establishment budget of the respondent University, the Director of the Centre (petitioner in W.P.(C) 8532/2019) requested the Vice Chancellor of the respondent University via communication dated May 10, 2019 to confirm and regularise the services of the incumbent faculty. On receiving no response to the said request, the petitioner along with two other teaching employees submitted separate representations to the Vice Chancellor. The respondent University however tendered no response.

21. The petitioner was issued a show cause notice dated June 28, 2019 wherein it was alleged that a video of outsiders handling and destroying official documents had surfaced. The petitioner replied to the said notice and denied all charges against her. It is the petitioner's case that the Inquiry Committee did not find any substance on the charge of the alleged violation of Code of Conduct and that the respondent University wanted to discredit the petitioner on false charges to stall the genuine demand of the Petitioner for confirmation of her service.

22. When the matter was listed on October 19, 2020, Mr. Ayyubi has submitted that the counter affidavit in W.P.(C) 8532/2019 shall be adopted and be read in reply to this writ petition as well. In view of the statement of Mr. Ayyubi, the stand of the University needs no reiteration, as I have already reflected the stand in W.P.(C) 8532/2019.

23. Counter Affidavit has been filed by the respondent no. 2-UGC wherein the stand taken in W.P.(C)8532/2019 and W.P.(C) 7864/2020 has been reiterated.

24. A rejoinder has been duly filed by the petitioner wherein the averments made in the Writ Petition have been reiterated.

W.P.(C) 8454/2020

25. This petition has been filed with the following prayers: -

“A. Issue an appropriate writ, direction or order quashing/setting aside the Rolling Advertisement No. 01/2020-21 dated September 18, 2020 issued by the Respondent University calling for fresh applications for the teaching posts at Sarojini Naidu Centre for Women's Studies, Jamia Millia Islamia on its merger with the Jamia Millia

Islamia University;

- B. Issue an appropriate writ, direction or order quashing/setting aside the Resolution dated May 2, 2019 passed by the Executive Council of the respondent University whereby existing posts at the Sarojini Naidu Centre for Women's Studies were again sought to be filled through proper Selection Committee after advertisement;*
- C. Issue an appropriate writ, direction or order directing the Respondent University to merge the services of the Petitioner under the regular establishment budget of Jamia Millia Islamia and grant all consequential benefits; and*
- D. Pass any other and such further order (s) in favor of the Petitioner as this Hon'ble Court may deem fit to pass in the interests of justice."*

26. It is the case of the petitioner that she was selected and appointed to the post of Assistant Professor at the Centre in 2016, through a properly constituted regular Selection Committee. The said appointment was approved by the EC of the respondent University at its meeting dated June 28, 2016. The personnel file of the petitioner in the records of the respondent University, as on September 19, 2020, and the terms of appointment mentions her as a regular employee, even though the appointment letter provided that the appointment is tenured till the XII Plan period or till the Project lasts. It is the case of the petitioner that her appointment to the post of Assistant Professor has become permanent with the merger of the post with the Regular Establishment budget of the respondent University.

27. Counter Affidavit has been filed by the respondent University wherein apart from reiterating the stand taken in the counter-affidavit in W.P.(C) 8532/2019, it is stated that the

appointment on a tenure post comes to an end when the tenure itself ends with the efflux of time, as stated in the appointment letter. The post of the petitioner was to subsist during the XII Plan period or until the scheme lasted or till further orders. However, the XII Plan came to an end on May 02, 2019 when posts of the XII Plan Scheme got abolished, though the Scheme continues in the normal course but the tenure ended on the day the post of XII Plan Scheme became Non-Plan post.

28. Counter affidavit has been filed by the respondent no. 4-UGC wherein the stand taken in W.P.(C) 8532/2019, W.P.(C) 7864/2020 and W.P.(C) 7928/2020 has been reiterated.

29. A rejoinder is filed by the petitioner wherein averments made in the Writ Petition have been reiterated.

W.P.(C) 10702/2020

30. This petition has been filed with the following prayers:-

“A. Issue a writ in the nature of Mandamus directing Respondent No. 1, JMI to conform to the guidelines and directions passed by Respondent No. 02, UGC for merging planned and non-planned posts for the faculty members at SNCWS;

B. Issue a writ in the nature of Mandamus directing Respondent No.1, JMI to appoint the Petitioner as Director, SNCWS which she rightfully deserves since December, 2019;

C. Issue a writ of Mandamus or any other appropriate writ order directing the Respondent University to merge the services of the Petitioner under the regular

establishment budget of Jamia Millia Islamia and grant all consequential benefits including those of the Seventh Central Pay Commission of the Government of India, the benefits of which are applicable to the Petitioner;

AND

D. Pass any other and such further order (s) in favor of the Petitioner as this Hon'ble Court may deem fit to pass in the interest of justice."

31. It is the case of the petitioner that she was appointed as an Assistant Professor in 2006 through regular Selection Committee. The appointment letter provided that the appointment is temporary. However, the terms and conditions of the appointment of the petitioner were similar to that of the employees appointed on a regular basis at the respondent University. The petitioner was thereafter, appointed as an Associate Professor at the Centre and was selected for the said post by a duly constituted Selection Committee in 2016. The petitioner made multiple representations to the respondent University requesting her position be merged under the Regular Establishment budget of the respondent University in the light of the UGC's letter dated June 25, 2019. Moreover, the petitioner has been appointed against a regular post and she has been subjected to all the rigours of regular selection. It is claimed by the petitioner that she has been working at the post for many years and the action of the respondent University to advertise the post afresh was unreasonable and arbitrary. That apart, it is contended by the petitioner in her prayer that she fulfils all the

requirements for the post of Director of the Centre and should be appointed to the said post.

32. A counter affidavit has been filed by the respondent University wherein the stand as taken in the counter-affidavit in W.P.(C) 8532/2019 has been reiterated.

CONT.CAS(C) 602/2020

33. The petitioner, (Prof. Sabiha Hussain) in W.P.(C) 8532/19 has filed this Contempt Petition under Section 12 of the Contempt of Courts Act, 1972 against respondent nos. 1 & 2 for violation of the interim protection granted by this Court vide order dated August 21, 2019, whereby the appointment of Prof. Baran Farooqi, respondent no. 3 in W.P.(C) 8532/2019 was stayed and the petitioner was allowed to continue on the post of Professor/Director until further orders. It is the case of the petitioner herein that the advertisement dated September 18, 2020 inviting applications for the post of one Professor, two Associate Professors and three Assistant Professors to the Centre was published with a clear motive to remove the petitioner from her post of Professor/Director and such an action amounts to willful disobedience of the order of this Court dated August 21, 2019.

34. It is averred that the respondent University in blatant disregard of its own Act, Statutes, Executive Council Resolutions and UGC Directions, has advertised six teaching positions on September 18, 2020 even though five out of six are already held by teachers appointed in 2016 through an All-India advertisement and selection by the duly constituted Selection Committee as per the eligibility criteria and UGC guidelines.

35. An additional affidavit has been submitted by the respondent University in furtherance to the direction of this Court to show the past practice followed by them while regularising a Centre as Non-Plan. It is stated in the said affidavit that no Centres established under UGC 'schemes' have been merged into the Non-Plan Regular Establishment (Grant) of the respondent University.

36. Affidavits have been filed in reply thereto by the petitioners in W.P.(C) 8532/2019, W.P.(C) 7864/2020, W.P.(C) 7928/2020 and W.P.(C) 8454/2020 wherein it is submitted that the respondent University has on previous occasions regularised the services of incumbents on conversion of UGC Centres from Plan to Non-Plan. The Centres so mentioned by the petitioners are UGC-HRD Centre (formerly the Academic Staff College), MMAJ Academy of International Studies (formerly Academy of Third World Studies), Academy of Professional Development of Urdu Medium Teachers, Indo-Arab Cultural Centre, Dr. K.R. Narayanan Centre for Dalit and Minorities Studies, Faculty of Education, Centre for North-East Studies and Policy Research, Department of Tourism, Hotel, Hospitality and Heritage Studies, Center for Interdisciplinary Research in Basic Sciences, Nelson Mandela Center for Peace and Conflict Resolution, Faculty of Dentistry, Faculty of Architecture and Ekistics, Jamia's Premchand Archives & Literary Centre and Centre for Physiotherapy and Rehabilitation Sciences.

37. It is further stated by the petitioners that similar posts in Jawaharlal Nehru University ('JNU', for short) in their Centre for

Women Studies have been merged into Non-Plan in 2016 and the incumbents therein have been absorbed. Reference is also made with respect to Calicut University, Pune University wherein the incumbents have been absorbed on merger of the Centres with the University. An affidavit filed by one of the petitioners also bring on record the correspondence exchanged between University and UGC while making the Centre a regular establishment of the University and also the note sheets of the UGC wherein a decision has been taken which resulted in the issuance of letter dated June 25, 2019.

38. A common rejoinder has been filed by the respondent no. 1 to all the affidavits wherein it is stated that the instances relied on by the petitioners to demonstrate past-practice of regularisation of services of incumbents are misplaced.

SUBMISSIONS

39. It is the submission of Mr. Ajit Kumar Sinha, learned Senior Counsel for the petitioner in W.P.(C) 8532/2019 that the petitioner joined the respondent University in 2008, initially as a Reader (Assistant Professor), then Associate Professor and finally as a Professor under the "*Programme for the Study of Social Exclusion and Inclusive Policy*" in Dr. K.R. Narayanan Centre for Dalit and Minorities Studies. That is to say that the petitioner's background and record is without blemish. She joined the Centre in 2016 as Professor/Director after being appointed by following a regular procedure and after the approval of the EC for the period of the XII Plan or till the Scheme lasts. He stated that the Centre, i.e., Sarojini Naidu Centre for Women's Studies is not a

regular Centre of the respondent University. It is considered regularised only when it is covered under Section 22 of the Jamia Millia Islamia Act, 1988. He conceded to the fact that the posts in the Centre were created by the respondent no. 5/UGC and the engagement of the petitioner continued from time to time. It is on the request of the respondent University to the respondent no. 5/UGC for transferring the faculty positions under various Plan Schemes to Non-Plan Scheme of the respondent University that the respondent no.5/ UGC agreed to the same vide communications dated April 18, 2019 and June 25, 2019. According to him the communication of the respondent no.5/ UGC dated June 25, 2019 is clear that the incumbent teaching staff need to be merged with the Regular Establishment of the respondent University and the advertisement issued on September 18, 2020 is illegal and without jurisdiction. According to him, the show cause notice issued, making allegations against the petitioner is vindictive and only with a view to deny the continuance of the petitioner. He seeks the prayers as made in the petition.

40. Mr. Sinha has placed reliance upon the Judgments of the Supreme Court in *Secretary, State of Karnataka and Ors. v. Umadevi (3) & Ors.*, (2006) 4 SCC 1 and *Nihal Singh and Ors. v. State of Punjab and Ors.* (2013) 14 SCC 65 in support of his submission that the petitioner is liable to be regularised as Professor/Director in the Centre which is now part of the University. He also referred to the Judgment in *Union of India & Ors. v. Hindustan Development Corporation & Ors.*, (1993) 3

SCC 499, to contend that the inaction of the respondent University to regularise the appointment of the petitioner and similarly placed persons is contrary to the doctrine of legitimate expectation.

41. Mr. Barun Kumar Sinha, learned counsel appearing for the petitioner in W.P.(C) 7864/2020 has stated that the petitioner was duly selected by the Selection Committee constituted by the respondent University as per University rules and in conformity with the eligibility criteria prescribed by both the respondent University and the UGC. After being declared successful by the selection committee in 2016, the petitioner has been working on the said post till date. Mr. Sinha contended that as the consequential effect of the merger of the Centre into Non-Plan is that, the incumbents have already been regularised and that it is only that their services need to be confirmed without resorting to fresh selection process, in view of the respondent University's past practice.

42. In this regard, Mr. Sinha has placed reliance on the judgment in the case of **Nihal Singh (supra)** wherein the Supreme Court has allowed for regularisation of the services of temporary employees after fulfilling certain conditions. He also relied upon the Supreme Court's decision in the case of **State of Gujarat and Ors. v. PWD Employees Union and Ors. (2013) 12 SCC 417** and **Sheo Narain Nagar and Ors. v. State Of Uttar Pradesh and Anr. (2018) 13 SCC 432** to contend that the decision in the case of **Umadevi (supra)** is not applicable to the employees whose initial recruitment does not suffer from any illegality or irregularity. He

submitted that the case of petitioner is not only squarely and satisfactorily covered in the ratio as decided in *Umadevi (supra)* but also is in conformity with all required provisions of UGC Guidelines, Act, Statute, Ordinances and past practices of the respondent University.

43. Mr. Mohinder J.S. Rupal, learned counsel appearing on behalf of the petitioner in W.P.(C) 7928/2020 has submitted that the petitioner was appointed to the post of Lecturer on probation basis in August 2008, through a duly constituted Selection Committee in the “*Programme for the Study of Social Exclusion and Inclusive Policy*” in Dr. K.R. Narayanan Centre for Dalit and Minorities Studies of the respondent University. Pursuant to an All-India advertisement by the respondent University, she applied for the post of Associate Professor in the Centre in 2016 and was selected by the duly constituted Selection Committee.

44. Mr. Rupal submitted that the respondent University has completely failed to act as per its own Act, Statutes and Ordinances and has further acted against the letter and spirit of respondent no. 2/UGC decision to merge the Plan post on which Petitioner was appointed into Non Plan post and confirm the services of the Petitioner. He further stated that the petitioner has spent nearly two decades of her life in the respondent University, initially as research scholar and from 2008 onwards as a teacher and ejecting the petitioner at this stage of her life and career from the University will be absolutely unjust.

45. Mr. Rupal has referred to the Judgment in *Nihal Singh and Ors. v. State of Punjab and Ors. (supra)* where the Supreme

Court has allowed the regularisation of services of temporary employees fulfilling certain conditions. Reliance is also placed in this regard on the Karnataka High Court decision in ***P. Rajesh & Ors. v. Karnataka Power Transmission Corporation Ltd. and Ors.*** 2016 (2) AKR 41. Mr. Rupal also contended that the Supreme Court in ***Malathi Das and Ors. v. Suresh and Ors.*** (2014) 13 SCC 249; ***State of Gujarat and Ors. v. PWD Employees Union and Ors.*** (*supra*); ***Narendra Kumar Tiwari & Ors. v. The State of Jharkhand & Ors.***, AIR 2018 SC 3589; ***Pratap Kishore Panda v. Agni Charan Das*** (2015) 11 SCALE 609 and ***Sheo Narain Nagar v. State of U.P.*** (*supra*) has stated that the decision in ***Umadevi*** (*supra*) is not applicable to the employees whose initial recruitment does not suffer from any illegality or irregularity and are made in consonance with the mandatory provisions of any Act, Statutory Rules and Regulations. The decision of the Supreme Court in ***Bhupendra Nath Hazarika and Anr. v. State of Assam and Ors.***, (2013) 2 SCC 516 has also been relied upon by Mr. Rupal to contend that the respondent University being a “State” is required to give due regard to the rules framed by it. Further reliance is placed on the Supreme Court Judgment in ***Balram Gupta v. Union of India and Anr.*** 1987 (Supp) SCC 228 where it is observed that as a model employer the Government must conduct itself with high probity and candour with its employees. In ***State of Haryana & Ors. v. Piara Singh and Ors.*** (1992) 4 SCC 118, the Supreme Court had clearly stated that the main concern of the Court in such matters is to ensure the rule of law is followed and to see

that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16 of the Constitution of India. He has also referred to the case of ***Principal, Mehar Chand Polytechnic and Anr. v. Anu Lamba and Ors. (2006) 7 SCC 161*** where the Supreme Court has observed that public employment is a facet of right to equality envisaged under Article 16 of the Constitution of India and that the recruitment rules are framed with a view to give equal opportunity to all the citizens of India entitled for being considered for recruitment in the vacant posts.

46. Mr. Rupal has stated that security of teachers' tenure of employment, and their tenure (as commensurate with the role they play in society) was recognised long ago and cited in the International Labour Organisation (ILO) / United Nations Education, Social and Cultural Organisation (UNESCO) Recommendation concerning the Status of Teachers over 51 years ago.

47. Mr. Anil Nauriya, learned counsel appearing for the petitioner in W.P.(C) 8454/2020, has submitted that the petitioner was appointed to the Centre as an Assistant Professor in 2016 after selection through a regular Selection Committee. He by conceding to the fact that the appointment letter provided that the appointment is temporary (tenured post till the expiry of the XII Plan or till project lasts), stated that the terms of her appointment were similar to those of a regular appointment. Before the petitioner joined the Centre, she was working as an ad-hoc faculty in Daulat Ram College, University of Delhi and that she

resigned from the said ad-hoc post to join the Centre. It is stated by Mr. Nauriya that at the time of joining, the petitioner had shared her apprehension about the Plan nature of her post to the then Vice Chancellor, who assured the petitioner that the post would ultimately be merged.

48. It is the submission of Mr. Nauriya that although the petitioner's appointment letter stated that the appointment is temporary, the post against which the petitioner was appointed has become permanent as a result of the merger and that the petitioner's appointment should be treated as such.

49. He further stated that in JNU where its Centre for Women's Studies was merged with the University, the existing staff were absorbed to the permanent Establishment of the University.

50. It is the contention of Mr. Nauriya that as a consequential effect of the merger, the tenure appointment of the petitioner has *ipso facto* merged in the Regular Establishment of the respondent University and therefore, inviting fresh applications for the post occupied by the petitioner is bad in law and discriminatory. He further averred that if the petitioner is forced to apply afresh, she would risk losing her seniority as she is currently the senior-most Assistant Professor at the University. It is further stated that the petitioner would also stand to lose all the increments that would have accumulated in her credit and also the contributions made to the National Pension Scheme.

51. Mr. Salman Khurshid, learned Senior Counsel appearing on behalf of the petitioner in W.P.(C) 10702/2020, submitted that

the petitioner is an Associate Professor at the Centre and has been at the Centre since its inception in 2006. The Petitioner was the first faculty member appointed to the Centre as Lecturer/Assistant Professor by way of an appointment letter dated December 05, 2006. Thereafter, she was appointed as Associate Professor at the Centre by way of an appointment letter dated December 07, 2016. The appointment was made through the regular selection process to the post of Lecturer/Assistant Professor and subsequently as an Associate Professor.

52. Mr. Khurshid stated that the impugned advertisement is arbitrary, unreasonable and contrary to the reasonable expectation of the petitioner as it undermines the credibility and seniority of the petitioner and other staff (teaching) members at the Centre. He submitted that there is no guarantee that the existing employees will be selected under the said advertisement. It is also the apprehension of the petitioner that the increments due would be lost. The petitioner has been contributing to the National Pension Scheme and fears the uncertainty of the outcome of such an advertisement. Moreover, the impugned advertisement does not give any weightage to the teaching experience of the existing faculty members at the Centre and is therefore, contrary to the legitimate expectations of the existing faculty members. The action of the respondent University, i.e., advertising the already occupied teaching positions is, unreasonable and arbitrary. Mr. Khurshid further stated that however, considering the fact that the respondent University has advertised fresh posts for the Centre, the petitioner filled the advertisement form anyway despite

currently holding the position of Associate Professor.

53. Mr. Khurshid submitted that, the term of the present Director of the Centre expired on December 08, 2019 after which the petitioner was to be appointed as Director of the Centre. Such appointment has not been made till date as the previous Director deliberately exceeded the term fixed for the said post, which is three years as per Statute 22-A of the respondent University read with Ordinance XIX of Part II of the University Ordinances (Admn./General). He has also submitted that no Director except the Founding Director of the Centre has served for more than the fixed tenure of three years. In this regard, reliance has been placed on *Sardar Patel University v. Harikrishna Chandulal Trivedi, Special Civil Application No. 4260 of 2001*, decided by the High Court of Gujarat on July 05, 2001 wherein it was held that no Head of a Department can hold his/her office after completion of his/her tenure.

54. He has further prayed for the implementation of the revised Pay Scale recommended by Seventh Central Pay Commission ('7th CPC' for short) and its consequential benefits including grant of arrears. In this regard, Mr. Khurshid has relied upon the judgment of the Supreme Court in *Union of India (UOI) & Ors. vs. Mohan Lal Capoor & Ors., AIR 1974 SC 87*, the judgments of this Court in *A.K. Mitra vs. Union of India, W.P.(C) No. 9184/2006*; *Government of NCT of Delhi vs. Jharna Banerjee and Ors., LPA 855/2015* decided on February 17, 2016; *D.G.O.F Employees Association & Anr. v. Union of India And Ors., W.P.(C) 4606/2013* decided on October 14, 2014

and *Municipal Corporation of Delhi vs. Workmen Virender Kumar & Ors.*, LPA 581/2010 decided on October 07, 2015 and the decision of the Bombay High Court in *Balwant Shankarrao Lovekar vs. State of Maharashtra & Ors.*, W.P.(C) 2035/2011 decided on February 10, 2012.

55. It is submitted by Mr. Fuzail Ahmad Ayyubi, learned Standing Counsel appearing for the respondent University that Statute 22-A of Jamia Millia Islamia Act, 1988 provides for the functioning of Centres and Ordinance XIX under the Act clearly states that the term of a Director shall be three years where there is a sanctioned post of Director in the Centre. He also submitted that the petitioner in W.P.(C) 8532/2019 was not removed/dismissed/suspended or terminated and that respondent no. 3 therein has in no way replaced the petitioner, as the Competent Authority only vested the academic and administrative power of the Centre in respondent no. 3 till further orders pending inquiry.

56. He further stated that the Executive Council of the respondent University in its meeting dated May 02, 2019 vide EC Resolution No. 8 decided to affirm the decision of the respondent UGC and to fill teaching positions through proper selection by issuing advertisement on an All-India basis.

57. Reliance has been placed by Mr. Ayyubi on the Supreme Court judgment in *State of Haryana v. Piara Singh (supra)*, wherein it is held that Courts should refrain from issuing directions affecting the intent and purpose of public employment. He has referred to the judgment of the Supreme Court in

Umadevi (supra) to contend that; (1) Regularisation is not a mode of appointment; (2) there is no automatic regularisation; (3) the High Court shall not in exercise of its power under Article 226 of the Constitution of India issue direction for grant of employment. He also relied upon the Judgment in the case of *Director, Institute of Management Development, U.P. v. Pushpa Srivastava 1992 (3) SCR 712* to contend that the petitioner cannot claim regularisation of service in the absence of any rule providing for regularisation after the period of service. He also placed reliance upon the judgments of the Supreme Court in the cases of *Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra and Ors. (2005) 5 SCC 122* and *Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College (1962) Supp. 2 SCR 144*. It is also his submission that not issuing requisite advertisement would violate the right guaranteed under Articles 14 and 16 of the Constitution of India. Further, the issuance of advertisement shall attract talent. He also relied on *UPSC v. Girish Jayanti Lal Vaghela & Ors. (2006) 2 SCC 482*, *Kendriya Vidyalaya Sangathan & Ors. v. L.V. Subramanyeswara & Anr., 2007 5 SCC 326* to state that all eligible persons must be called which will be in conformity of Article 14 of the Constitution of India.

58. It is submitted by Mr. Ayyubi that Centres which are not under a UGC Scheme but are mentioned as having established under Plan and later converted to Non-Plan are not the same as merger of a UGC-Scheme based Center into the Regular Establishment of the University (Non-Plan). The Centres

enumerated under Statute 22A of the University Statutes are permanent Centres of the respondent University and have always been made part of the Regular Establishment of the University subsequently. Whenever any Centre or post within a Centre/Department/Faculty is proposed to be established by the University, it is done only after due approval of the respondent UGC and the nomenclature is as Post/Centre “*under the particular plan*” during which it had been created and is subsequently made into Non-Plan. However, that does not mean that such Posts/Centre is established in pursuance of a UGC Scheme, as is the case in the present petitions.

59. Mr. Ayyubi submitted that the petitioners have even sought to include posts in Faculty of Natural Sciences, Faculty of Dentistry, Faculty of Architecture and Ekistics etc. which are not under any Scheme but are merely Faculties/Departments. The petitioners have even stated the AJK Mass Communication Centre has been created under Plan and converted to Non-Plan, which is completely out of place as the said Centre was established under Statute 22 of the University. As regards UGC-HRD Centre, it is submitted that it continues to operate under a UGC Scheme, is receiving specific grant-in-aid from the UGC and all incumbents at the said Center are co-terminus with the UGC Scheme and should such Scheme come to an end, their appointment/employment will also cease from such date.

60. Mr. Ayyubi has placed reliance upon the judgments of the Supreme Court in *Brij Mohan Lal v. Union of India and Ors.* (2012) 6 SCC 502; *Mohd. Abdul Kadir and Anr. v. Director*

General of Police, Assam and Ors., (2009) 6 SCC 611 and *Jawahar Lal Nehru Krishi Vishwa Vidyalaya, Jabalpur, M.P. v. Bal Kishan Soni and Ors., (1997) 5 SCC 86* to contend that appointees under a scheme/project have no vested right of regularisation.

CONCLUSION

61. Having heard the learned counsels for the parties and perused the record, the only issue which arises for consideration is, whether the petitioners need to be granted regular appointment / absorbed on the posts in the Centre, pursuant to the approval granted by the UGC for their merger into the Regular Establishment of the University vide its letters dated April 18, 2019 and June 25, 2019.

62. It is a conceded case of the parties that, the UGC approved the establishment of the Centre under the IX Plan with the respondent / University. It also financed the working of the Centre. All the petitioners are working on the teaching posts in the Centre, with the petitioner in W.P.(C) 8532/2019 Professor Sabiha Hussain, appointed as Director / Professor in the Centre.

63. Pursuant to the approval granted by the UGC, as referred above, the respondent / University issued an advertisement on September 18, 2020 inviting the applications for one post of Professor, two Associate Professors and three Assistant Professors. The submissions of the learned counsels for the petitioners in support of their prayers are primarily the following:

- (i) Their initial appointment in the Centre was through the process of regular appointment and after the approval

of the EC.

(ii) The UGC vide its letter dated April 18, 2019, granted approval for merger of teaching posts on which they are working, in the Regular Establishment of the University.

(iii) The UGC vide its letter clarified that the services of the persons appointed through proper selection procedure and who are fulfilling all educational and other qualifications and whose appointments were approved by statutory bodies be merged under Regular Establishment of the University.

(iv) The inaction of the University / respondent to absorb the petitioners is contrary to the doctrine of legitimate expectation.

(v) That the effect of the merger of the Centre into non-plan is that the incumbents have already been regularised and it is only the services, which need to be confirmed without following the fresh selection process.

(vi) The advertisement dated September 18, 2020, is illegal and undermines the number of years of service put in by the petitioners.

(vii) The University had regularised the services of the incumbents on conversion of UGC Centres from plan to non-plan even in the past.

(viii) Even in JNU similar posts in their Centre for Women Studies have been merged into non-plan in 2016 and incumbents therein have been absorbed.

64. Having noted the broad submissions made by the learned counsels for the petitioners at the outset, it may be stated, it is the conceded case of the petitioners, that their appointment in the Centre was for the period of UGC's XIIth Plan or till the end of the scheme. None of the petitioners have challenged the terms of their appointment. It is also a conceded case that their appointment was pursuant to an advertisement, on the posts which were ad-hoc and not regular. On being found successful they were appointed for the period as mentioned above. The nature of appointment being temporary and not permanent, not many persons, though fulfilling the eligibility would have applied for the same. The Supreme Court in the case of ***Official Liquidator v. Dayanand & Ors., 2008 (10) SCC 1***, has in para 52 held, “xxxx the Official Liquidators appear to have issued advertisements for appointing the company-paid staff and made some sort of selection, more qualified and meritorious persons must have shunned from applying because they knew that the employment will be for a fixed term on fixed salary and their engagement will come to an end with the conclusion of liquidation proceedings. xxxx In this scenario, a direction for absorption of all the company-paid staff has to be treated as violative of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution.”

65. No doubt, the UGC has in the letters conveyed its approval to merge all the teaching positions in the Centre in the Regular Establishment of the University but the same does not convey that the incumbents shall also be absorbed on an as-is-

where-is basis in the Regular Establishment of the University. Even, in the letter dated June 25, 2019, the UGC, has by stating *“the incumbent teaching staff may be merged under the Regular Establishment budget of the Jamia Millia Islamia”* has left it to the University to take a decision in that regard.

66. It is the case of the University that it, through EC has taken a decision on May 02, 2019, to fill the existing posts by way of proper selection after an advertisement calling applications on an All-India basis is issued. I find no illegality in the said decision of the University, in view of the authoritative pronouncement of the Supreme Court in *Secretary, State of Karnataka v. Umadevi (supra)* wherein the Supreme Court held that public employment has to be in terms of Constitutional Scheme being in conformity with provision of Articles 14 and 16 of the Constitution of India by giving wide publicity and considering every person who fulfills the eligibility conditions and applies for the post. In paras 43 and 50 the Court held as under:

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the

scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for

absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as “litigious employment” in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

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50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action

of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages

payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.”

67. Mr. Ayyubi is right in contending that regularisation / absorption is not a mode of appointment [Reference to: ***Nagar Mahapalika, Kanpur v. Vibha Shukla (SMT.) & Ors., 2007 (15) SCC 161***]. The plea of Mr. Ayyubi, that the issuance of advertisement shall attract talent and regularising / absorbing the petitioners without considering all eligible persons through advertisement shall violate Article 14 is appealing. The judgements in the case of ***UPSC (supra), Kendriya Vidyalaya Sangathan (supra)*** relied upon by Mr. Ayyubi in support of his submission that all eligible persons must be called for / considered which will be in conformity with Article 14 of the Constitution of India is justified.

68. The counsels for the petitioners have contested the advertisement and are seeking their regular appointment by relying on the judgments of the Supreme Court and the High Courts. Insofar as the judgment in the case of ***Union of India and Ors. v. Hindustan Development Corporation and Ors. (supra)*** relied upon by Mr. Sinha in support of his submission that inaction of the respondent / University to regularise the appointment of the petitioners and similarly placed persons is contrary to the doctrine of legitimate expectation is concerned, the same is misplaced. This I say so because a person can have

legitimate expectation only in consonance with law, not in contravention of law. If the plea advanced by the counsels for the petitioners is to be accepted, then, the legitimate expectation of those persons who are also seeking employment in the University, shall be violated. The law being well settled in terms of the judgment in the case of *Secretary, State of Karnataka v. Umadevi (supra)*, the judgment relied upon shall not be applicable to the facts of this case.

69. Regarding the reliance placed on the judgment in the case of *Nihal Singh (supra)*, the Supreme Court was concerned with the recruitment made under Sections 17 & 18 of the Police Act, 1861 which enables the State to appoint Police Officers not below the rank of Inspector as Special Police Officers. These appointments have taken place during large scale disturbances in the State of Punjab in the 1980s. The persons who were appointed, approached the High Court for regularisation of their services. The writ petition was dismissed directing the consideration of the case of the petitioners / appellants in accordance with law by passing a speaking order. Their claim for regularisation was rejected, on the ground that they are working as Guards with various banks and their wages are being paid by banks and their claim for regularisation only lay with the bank and not with the Police Department. The Supreme Court while allowing the appeals held that the process of recruitment was consistent with Articles 14 and 16 of the Constitution of India as the process clearly indicated that it is not a case where the persons like the appellants were arbitrarily chosen to the

exclusion of other eligible candidates. Such process of selection sanctioned by law under Section 17 of the Act was held to be not irrational. On such finding, the Supreme Court directed the State of Punjab to regularise the services of the appellants therein by creating posts within three months from that day. Suffice to state, the judgment has no applicability in the facts of this case, more so, in view of my finding above.

70. In so far as the Judgment in the case of *State of Gujarat v. PWD Employees Union (supra)* is concerned, the issue before the Supreme Court was related to a scheme contained in the resolution dated October 17, 1988, which stipulated, all the daily wage workers who are working in the building maintenance and repairing work in different departments of the State such as Road and Building Department, Water Resources Department, Forest Department, etc. are entitled to regularisation or permanency in the service. The benefit of the resolution was not given to the daily wage workers working in Forest Department. A resolution in that regard was passed on December 22, 1999. The workers approached the High Court. Few rounds of litigation took place before the Court. Finally, an order was passed by the Single Judge, directing, quasi permanency be given to the workers, with counting of service notionally. The appeal therefrom before the Division Bench by State of Gujarat was dismissed. The Supreme Court held, they were engaged in jobs of perennial nature and the initial recruitment had not suffered from any illegality / irregularity. The Court held, the Judgments in the case of *Umadevi (supra)* and *A. Umarani v. Registrar, Coop. Societies,*

(2004) 7 SCC 112 have no applicability as the said decisions shall be applicable where initial appointment was irregular / illegal. In the case in hand, the appointment of the petitioners having been made for the purpose of a limited period during the duration of the scheme / Plan and given that not all the eligible persons must have applied, and the Supreme Court in *Umadevi (supra)* has held that regular appointments have to be made in terms of the recruitment rules and by giving wide publicity, the judgment in *State of Gujarat v. PWD Employees Union (supra)* shall have no applicability.

71. In the case of *Sheo Narain Nagar (supra)*, the Supreme Court was concerned with a case where the appellants were employed in the year 1993 and they had rendered service for three years when they were offered the service on contract basis. There were no rules in place for offering some kind of appointment. They were confirmed with the temporary status on October 2, 2002. In the year 1999, directions were issued to consider their case for regularisation. They were not granted regularisation / permanent appointment despite having completed 10 years of service. It is in that context, the Supreme Court by referring to Para 53 of the *Umadevi (supra)* has held that since they have completed 10 years of service and temporary status has been given by the respondents with retrospective effect from October 2, 2002, they were to be regularised. The said Judgment is clearly distinguishable and has no applicability in the facts of this case.

72. Insofar as the Judgment in the case of *P. Rajesh (supra)*

is concerned, the Supreme Court on a finding that the petitioners therein were not back-door entrants inasmuch as they had taken part in the recruitment process, which was lawfully initiated and they had not been appointed arbitrarily to the exclusion of other aspiring eligible candidates and the fact that the similarly placed contract engineers were regularised, the Court had granted directions for regularisation of the petitioners therein. This Judgment is distinguishable inasmuch as it is my finding above that the initial advertisement was for appointments limited to IXth plan or scheme and not permanent for which reason not many people would have applied for the same given the nature of appointment to be made; and it is the case of the respondents that they have issued an advertisement for ensuring applications from larger talent is considered while making regular appointment, no direction for regularisation can be given. Hence this Judgment is also distinguishable.

73. Reliance on the case of *Malathi Das (supra)* would not come to the aid of the petitioners as the Supreme Court was of the view that the case has to be dealt with in terms of Para 53 of *Umadevi (supra)*. It is also a finding of fact that similarly placed employees were regularised by the State after the decision in *Umadevi (supra)* and the stand of the appellants in refusing regularisation to the respondents cannot be countenanced. As stated above, the case of the petitioners is not based on Para 53 of *Umadevi (supra)*. Hence the Judgment is also distinguishable.

74. In *Narendra Kumar Tiwari (supra)*, the appellants therein had sought the regularisation on the ground that they have

put in ten years of service and therefore were entitled to be regularised. The High Court did not permit their regularisation in view of *Umadevi (supra)*, since they had not worked as on the date of cut-off, i.e., April 10, 2006 when the Constitution Bench rendered its decision. The Supreme Court was of the view that the appointment of the appellants was irregular and not illegal and that they had put in ten years of service. The regularisation rules which contemplate ten years of service as on April 10, 2006 of which a pragmatic interpretation needs to be taken and the fact that the appellants having completed ten years of service on the date of promulgation of the regularisation rules, the benefit thereof ought to be given. This judgment is also distinguishable in the facts of the case as it is not the case of the petitioners herein that they are entitled to the benefit of Para 53 of the Judgment in the case of *Umadevi (supra)* or there are regularisation rules in the University.

75. Though reliance has been placed on the Judgment in the case of *Bhupendra Nath Hazarika and Anr. (supra)*, the same is not of any help to the petitioners. In the said Judgment, the Supreme Court has held that if the recruitment to service is regulated by the statutory rules, then the same has to be in accordance with those rules and if an appointment is made in breach of the rules, the same would be illegal.

76. It is the case of the respondent / University that regular appointment has to be made in accordance with the rules by giving a wide publicity and considering all those persons who apply on the basis of an All-India advertisement. Similarly, the

judgment in *Principal, Mehar Chand Polytechnic (supra)* shall also not help the case of the petitioners as the ratio of the judgment is that any public employment has to be in accordance with Article 16 of the Constitution of India. I have already held that the issuance of advertisement by the University and the selections made thereof shall be in consonance with the provisions of the Constitution.

77. Having said that, one of the pleas of Mr. Ajit Kumar Sinha was that the teachers working in similar Centres have been absorbed in the Regular Establishment of the University. In fact, on such a submission I had on February 10, 2021 passed an order directing the University to file an affidavit as to what practice was followed by the University in the past, while regularising a Centre into Non-Plan, whether the same resulted in the regularisation of the incumbents working in the Centre without resorting to a fresh selection process. Pursuant to the said order, an affidavit has been filed by the University wherein they have referred to six Centres established under the UGC scheme not yet merged into Non-plan Regular Establishment of Jamia Millia Islamia and as such none of the incumbents working in those Centres have been regularised.

78. Reply affidavits have been filed by the petitioners wherein the petitioner Professor Sabiha Hussain has, in para 9 referred to eight Centres which are all part of Statute 22(A) consisting of both categories, i.e., UGC Scheme Centres and Non-scheme Centres to contend that the respondent / University has an absolute past practice of regularising the incumbent

teaching staff when a particular Centre, is merged into the Regular Establishment of the University. She has also given one instance of JNU, which was also under the UGC Women Studies Scheme similar to the Centre wherein the petitioners are working, to state, that the incumbent teaching staff has also been regularised. A reference is made to the correspondence exchanged between the JNU and the UGC in that regard.

79. A common rejoinder to the replies of the petitioners have been filed by the Jamia Millia Islamia to state that the stand of the petitioners that regularisation of Centre / Posts is unaffected, whether the Centre was created under the UGC Scheme or on its own accord. It is stated that the distinction between the plan / non plan and scheme / non scheme goes to the very heart of the matter and is the most crucial aspect to be settled. According to the University, the Centres enumerated under Statute 22(A) of the University Statutes are permanent Centres of the University and have always been made part of the Regular Establishment of the University subsequently. It is clarified that whenever any post within a Centre / Department / Faculty is proposed to be established by the University, it is after due approval of UGC with its nomenclature as “Post / Centre” under a particular plan during which it had been created, however that does not mean that such Post / Centre is established in pursuance of UGC Scheme as in the case of a present batch of petitions. In other words, since the UGC five-year plan was envisioned for a period of five years and budget allocation was made at the beginning of that plan, naturally any post or permanent Centre that the

University may create in the duration of such plan would be included as part of the Regular Establishment only in the next five-year plan. The University has given an example, inasmuch as if the University were to decide in the year 2014 that there is need for bringing of additional posts of Assistant Professor in a particular faculty in such circumstances, the XIIth plan having commenced in 2012, which did not account for these additional posts under the General Development Assistance and therefore from 2014 till 2017 funding on those additional posts would have to be given by the UGC under plan. However, when the XIIth Plan ends and the next begins, the said additional posts would automatically be treated as Non-plan and therefore, part of Regular Establishment of the University. Similar is the case with Centres of the University except those Centres which are established / created in pursuance of particular UGC Scheme / Project, since such Centres cannot be termed *per se* as the Centres of the University but rather, co-terminus with specific Scheme of the UGC in that regard. With regard to all the Centres named by the petitioners, the following is stated; (i) UGC and HRD Centre continues to run under a Scheme of UGC and is receiving specific grant-in-aid from the UGC; (ii) Academy of Professional Development of Urdu medium teachers though initially started under the scheme of the UGC such scheme having been discontinued by the UGC, the said University continues, the Academy for promotion of Urdu language however, the nature of appointment of incumbents therein continues to be purely temporary; (iii) Centre for Physiotherapy

and Rehabilitation Sciences; Centre for Interdisciplinary Research in Basic Sciences; Centre for North-East Studies and Policy Research; Department of Tourism; Hotel; Hospitality and Heritage Studies; Faculty of Dentistry; AJK Mass Communication Centre; Faculty of Architecture and Ekistics are not related to UGC Scheme.

80. From the above, it is noted that the University has tried to draw a distinction between the Centres financed by UGC for specific plan and those Centres which are not UGC Scheme based Centres, wherein the incumbents have been brought in the Regular Establishment of the University. Though, there is some justification for the University to draw distinction between the Centre with which the petitioners in this batch of petitions are concerned and the other Centres, this Court is of the view that the plea that all the Centres are alike irrespective whether the same is under UGC Scheme / Centre or Scheme / Centre started in the University in a plan and the petitioners need to be absorbed in the Regular Establishment on parity is not appealing for two reasons; firstly, the mandate of the Supreme Court in the case of *Umadevi (supra)* need to be adhered to, i.e., regularisation can only be in one eventuality where the appointment is irregular and the incumbents have completed 10 years of service and not otherwise. It is not the case of the petitioners that they have completed 10 years of service in the Centre. Further, the Supreme Court in *Umadevi (supra)* clearly held that regular appointment has to be in terms of the Constitutional scheme, that is in conformity with the provisions of Article 14, 15, 16 of the

Constitution of India. The petitioners cannot be regularised overlooking the rights of others, who are equally eligible for applying to the posts in an Institution established under a Statute. I have already justified the decision of the University to issue an advertisement calling for applications in order to have a wider zone of consideration; to invite talent, which would be in conformity with the Constitutional Scheme. Secondly, there cannot be any negative equality, that is, the benefit given to the incumbents in other Centres cannot be given to petitioner when such a benefit is contrary to the judgment in *Umadevi (supra)*. A common plea was taken by some of the counsels for the petitioners that as the posts on which the petitioners are working have been brought into the regular establishment of the University, their services are deemed to have been regularised in the University. The plea is unmerited for the reasons; (i) there is no declaration by the University in that regard; (ii) in any case, it is the decision of the EC to call for applications on an All-India basis for making appointment to the posts in the Centre; (iii) the advertisement has already been issued by the University calling for applications, which advertisement I have already upheld in my finding above, as the same is in consonance with the law laid down by the Supreme Court in *Umadevi (supra)*.

81. I am conscious of the fact that the petitioners have worked for five years in the Centre and have the working knowledge of research being carried out in the Centre. Such an expertise must be given due regard and it may also be a case where, with the passage of time, they may have become overage.

The only way forward is, (i) the benefit of age relaxation be given; (ii) benefit of each completed year of engagement in the Centre is given in favour of the petitioners, at the time of selection, like awarding certain marks up to a ceiling limit so that they may have some advantage but not undue advantage over the outsiders. This I say so, in view of the judgment of the Supreme Court in ***University of Delhi and Ors. v. Delhi University Contract Employees Union and Ors., Civil Appeal Nos. 1007 and 1008 of 2021***, decided on March 25, 2021 wherein the Supreme Court in paras 12 and 13 has stated as under:

“12. It is true that, as on the day when the judgment in Umadevi MANU/SC/1918/2006: (2006) 4 SCC 1 was delivered by this Court, the contract employees had put in just about 3 to 4 years of service. But, as of now, most of them have completed more than 10 years of service on contract basis. Though the benefit of regularization cannot be granted, a window of opportunity must be given to them to compete with the available talent through public advertisement. A separate and exclusive test meant only for the contract employees will not be an answer as that would confine the zone of consideration to contract employees themselves. The modality suggested by the University, on the other hand, will give them adequate chance and benefit to appear in the ensuing selection.

13. We, therefore, direct that all the concerned

contract employees engaged by the University be afforded benefits as detailed in paragraphs 6 and 7 of the affidavit dated 09.03.2021 with following modifications:

(a) The benefit of age relaxation as contemplated in paragraph 6 of the affidavit without any qualification must be extended to all the contract employees.

(b) In modification of paragraph 7 of the affidavit, those employees who were engaged in the year 2011 be given the benefit of 10 marks in the ensuing selection process while for every additional year that a contract employee had put in, benefit of one more mark subject to the ceiling of 8 additional marks be given. In other words, if a contract employee was engaged for the first time in the year 2010, he shall be entitled to the benefit of 11 marks, while one engaged since 2003 shall be given 18 marks, as against the appointee of 2011 who will have the advantage of only 10 marks. The contract appointees of 2012 and 2013 will have the advantage of 9 and 8 marks respectively.

(c) The Public Notice inviting applications from the candidates shall specifically state that the advantage in terms of the order

passed by this Court would be conferred upon the contract employees so that other candidates are put to adequate notice.

(d) All the contract employees shall be entitled to offer their candidature for the ensuing selection in next four weeks and in order to give them sufficient time to prepare, the test shall be undertaken only after three months of the receipt of applications from the candidates.”

82. As the advertisement has already been issued and the applications have been received by the University, appropriate shall be that a corrigendum / public notice is issued by Jamia Millia Islamia specifically stating that the advantage in terms of this order, would be conferred upon petitioners / persons who have worked in the Centre so that the other candidates are put to adequate notice. If the petitioners have not applied against advertisement, they shall apply within four weeks from today.

83. The above shall not only result in a chance being given to the petitioners to participate in the selection process, but will also entitle them to have some advantage over the other participants. Till such time, the selection process is complete, the petitioners shall continue to work on the posts on which they are working in the Centre. Their further continuance shall be regulated by the final selection to be made by the respondent / University in terms of the advertisement issued on September 18, 2020.

84. Insofar as the challenge to the appointment of respondent No.3 in W.P.(C) 8532/2019 is concerned, the University shall pass an order on the continuance of the petitioner as Director taking into consideration the findings of the Inquiry Committee, and also the position under the statutes, including the tenure, and communicate the decision to the petitioner. If the respondent University is of the view that there is no impediment for continuance of the petitioner as Director / Professor, then the petitioner shall be allowed to continue on the post till such time, the selection procedure is held and appointments are made, as directed above. It is also made clear, if the decision of the University is that the petitioner should not continue as Director, then she shall be allowed to work on the post of Professor, till such time the appointments are made. In other words, in both the eventualities, the appointment of the petitioner as Director and / or Professor shall be regulated by the result of the selection that is to take place pursuant to advertisement dated September 18, 2020. Similarly, a prayer has been made by petitioner in the writ petition being W.P.(C) 10702/2020 for payment of benefits under 7th CPC on merger of posts with the Regular Establishment. Suffice to state, the grant of benefits of the 7th CPC shall be only in the eventuality, i.e., if the petitioners are appointed pursuant to selection in terms of the advertisement dated September 18, 2020.

85. In view of my discussion above, it must be held the petitioners are not entitled to regularisation / absorption. The advertisement dated September 18, 2020 is valid and justified.

The petitions are disposed of in terms of my conclusion above.
No costs.

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86. This contempt petition has been filed by the petitioner in W.P.(C) 8532/2019 alleging violation of order dated August 21, 2019 whereby the appointment of the respondent No.3 was stayed and the petitioner was allowed to continue on the post of Professor / Director till further orders.

87. It is the case of the petitioner that the advertisement dated September 18, 2020 inviting applications for the post of Professor amongst others is with a clear motive to remove the petitioner from her post of Professor / Director and as such is willful disobedience of the Court order. I am not in agreement with the stand of the petitioner in this petition, as the advertisement shall not constitute a violation of the order as passed on August 21, 2019. That apart, the petitioner is also continuing on the strength of the interim order.

88. The contempt petition is closed.

CM Nos. 44194/2019, 52378/2019, 5316/2020, 5317/2020 & 27998/2020 in W.P.(C) 8532/2019,
CM No. 25800/2020 in W.P.(C) 7864/2020
CM No. 25930/2020 in W.P.(C) 7928/2020
CM No. 27309/2020 in 8454/2020

Dismissed as infructuous.

V. KAMESWAR RAO, J

AUGUST 18, 2021/jg/aky