

\$~46 (2021 list)

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

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Date of decision: 27.10.2021

+ **LPA 398/2021**

DR. MUHAMMAD ABULAISH

..... Appellant

Through: Mr. Ananga Bhattacharyya with
Mr. Shiv Gupta, Mr. R.K. Tanwar,
Ms. Devahuti Tamuli and Mr. Ujjwal
Kumar, Advocates.

versus

JAMIA MILIA ISLAMIA UNIVERSITY

..... Respondent

Through: Mr. Pritish Sabharwal, Asst. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Court hearing convened *via* video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J.: (ORAL)

1. Issue notice.
2. Mr. Pritish Sabharwal, who appears on advance notice on behalf of the respondent, accepts notice.
3. With the consent of counsel for the parties, the appeal is taken up for hearing and final disposal, at this stage itself.
4. This appeal is directed against the judgement judge dated 27.09.2021, passed by the learned single in W.P.(C) No. 10222/2021.
- 4.1. This judgement was delivered in the context of the following reliefs, claimed by the appellant in the writ petition:

“a. Issue writ, order or direction in the nature of certiorari calling for the record of the petitioner's case leading to the orders (decisions) dated 21.06.2021 & 27.08.2021, rejecting the

petitioner's application/notice dated 01.06.2021 and 28.06.2021 for Voluntary Retirement and quash the same and further issue writ, order or direction in the nature of mandamus commanding the respondent- to process the petitioner's case of Retiral Benefits and other incidental exercise to be performed following the petitioner's voluntary retirement in accordance with law.

b. Pass such other or further orders as this Hon 'ble Court deems fit and proper in facts and circumstances coming to the-notice during the pendency this petition”

4.2. It is not disputed by Mr. Sabharwal that, the first limb of the prayer, which essentially deals with the appellant's assertion that, he could seek voluntary retirement in terms of Rule 56(k) of the Fundamental Rules (in short “FR”), has been allowed by the learned single judge, *via* the impugned judgement.

4.3. Both Mr. Ananga Bhattacharyya, learned counsel for the appellant and Mr. Sabharwal, are *ad idem* say that it is only the second limb of the prayer, which has been declined.

5. Therefore, the observations made in paragraph 24 of the judgement to the effect, that “*In view of my discussion I do not see merit in the petition. The same is dismissed.*”— is at odds with the discussion, which is contained in the previous paragraphs of the impugned judgement.

5.1. It is Mr. Bhattacharyya's apprehension that, this observation of the learned single judge, as indicated above, may come in the way of the appellant, seeking other reliefs that may be available to him in law.

6. We may also record that, Mr. Sabharwal indicated to us, in no uncertain terms, that the appellant will be relieved from service, as he has taken voluntary retirement, in consonance with the provisions of Rule 56(k) of the FR.

6.1. The statement of Mr. Sabharwal is taken on record.

7. We, thus, modify the impugned judgement, to the extent it is indicated in paragraph 24 of the said judgement that the writ petition is dismissed. The writ petition, according to us, has been partially allowed; an aspect which is not disputed by Mr. Sabharwal.

7.1. It is ordered accordingly.

8. The appeal is disposed of in the aforesaid terms.

**(RAJIV SHAKDHER)
JUDGE**

**(TALWANT SINGH)
JUDGE**

OCTOBER 27, 2021

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Click here to check corrigendum, if any