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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 31st January, 2022Pronounced on: 21st February, 2022

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W.P.(C) 1798/2022 & CM APPL.No.5163/2022

MOHAMMAD JAVED MALIK

..... Petitioner

Through: Mr.M.Sarwar and Mr.Iram
Peerzada, Advocates.

versus

JAMIA MILLIA ISLAMIA & ORS.

..... Respondents

Through: Mr.Chetan Sharma, ASG with
Mr.Fuzail Ahmad Ayyubi,
standing counsel, Mr.Pritish
Sabhrwal, ASC for JMI,
Ms.Akanksha Rai and Mr.Sanjeet
Kumar, Mr.Vinay Yadav,
Mr.Sahaj Garg, Mr. Amit Gupta,
Mr.Rishav Dubey, Advocates for
JMI/UCOI.
Mr.Apoorv Kurup and Ms.Nidhi
Mittal, Advocates for R-6/UGC.**CORAM:****HON'BLE MR. JUSTICE YOGESH KHANNA****YOGESH KHANNA, J.** (Through Video Conferencing)

1. The This petition is filed with following prayers :

A. Calling the entire official records from Respondent No.1 pertaining to the impugned appointment of Dr. Nazim Hussain Al-Jafri (Respondent No. 4) as a Professor in the Department of History & Culture, Jamia Millia Islamia, New Delhi;

B. Issue an appropriate writ, order, direction and /or declaration in the nature of quo warranto declaring the impugned appointment of Dr. Nazim Hussain Al-Jafri (Respondent No. 4) in flagrant violation and total non-

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compliance of Statute-25 of the Jamia Millia Islamia Act, 1988 read with Clauses 3.1, 3.2, 4.0, 4.1(III) of the UGC (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the maintenance of standards in Higher Education) Regulations, 2018, besides being violative of Ordinance-15 (XV) of JMI Act, 1988 read with Article 14 and 16 of the Constitution of India, 1950, and also ultra vires to Section-11 (3) read with Statute-14(2)(II) of JMI Act, 1988 illegal, arbitrary, void ab initio and non est in law.

2. The petitioner seeks to challenge the entire decision making process culminating into the impugned selection and appointment of respondent No. 4 as a Professor in the Department of History & Culture, Jamia Millia Islamia – respondent/University being in flagrant violation/contravention and total non-compliance of the Statute-25 of the Jamia Millia Islamia Act, 1988 read with clauses 3.1, 3.2, 4.0, 4.1 (III) of the UGC (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the maintenance of standards in Higher Education) Regulations, 2018, besides being violative of Ordinance-15 (XV) of JMI Act, 1988 read with Article 14 and 16 of the Constitution of India and also ultra vires to Section-11(3) read with Statute-14(2)(II) of the JMI Act, 1988, as the same is a colorable exercise of power, being illegal, arbitrary, void ab initio.

3. It is alleged on 01.06.2021 the respondent/university issued an advertisement bearing Adv. No.05/2021-22, inviting applications in various departments of the University for the direct and open post of Professor, Associate Professor and Assistant Professor, laying down the eligibility criteria and qualifications desired from applicants, for which applications were received from various candidates and the last date of



receipt of applications was 30.06.2021, including that of the post of professor in the Department of History & Culture, JMI.

4. Pursuant to the aforesaid advertisement dated 01.06.2021, many applications were received for the post of Professor in the Department of History and Culture, Jamia Millia Islamia and for which Screening Committee shortlisted some candidates for the interview.

5. On 24.12.2021 after interviewing all the candidates shortlisted by the Screening Committee, the duly constituted Selection Committee found none candidate suitable to be appointed to the post of Professor and thus the respondent/University had no option but to abort the entire process on the basis of the findings of the Selection Committee:

6. It is alleged on 20.01.2022 the Vice Chancellor of the respondent/University unilaterally appointed respondent no.4 to post of Professor in Department of History and Culture by invoking Section 11(3) of the Jamia Millia Islamia Act.

7. On 21.01.2022 a press release was issued by the Public Relations Officer, Jamia Millia Islamia – respondent/University stating the Executive Council has approved the appointment of respondent no.4 as Professor in the Department of History & Culture of the respondent/University.

8. The learned counsel for the petitioner alleges that he needs a Writ of Quo Warranto which power can be exercised on satisfaction of four conditions viz. a) the office must be created under Statute; b) the office



must be of substantive character; c) it is enjoined with the duties of public nature and d) it is uperved by some person.

9. The grievance of the petitioner is without following the procedure the respondent no.4 has been appointed as a Professor. It is stated he neither applied for the post of the Professor nor had gone to the screening and interviewing the selection committee, yet the Vice Chancellor of the University has arbitrarily appointed him as a Professor. Reference was made to following rules as under:

“Section 11. (1)-(2) xxxxxx.

(3) The Shaikh-ul-Jamia (Vice-Chancellor) may, if he is of opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act and shall report to such authority the action taken by him on such matter. provided that if the authority concerned is of opinion that such action ought not to have been taken, it may refer the matter to the Visitor whose decision thereon shall be final: Provided further that any person in the service of the University who is aggrieved by the action taken by the Shaikh-ul-Jamia (Vice-Chancellor) under this sub-section shall have the right to appeal against such action to the Majlis-i-Muntazimah (Executive Council) within three months from the date on which decision on such action is communicated to him and thereupon the Majlis-i-Muntazimah (Executive Council) may confirm, modify or reverse the action taken by the Shaikh-ul-Jamia (Vice-Chancellor).

Statute 25(8) Selection Committee

Notwithstanding anything contained in the foregoing clauses, the Majlis-i-Muntazimah (Executive Council) may invite a person of high academic distinction and professional attainment to accept a post of Professor in the University, on such terms and conditions as it deems fit, and on the person agreeing to do so, appoint him to the post.”

10. It was argued that it was incumbent upon Executive Council to invite a person of high academic distinction and professional attainment in a transparent manner keeping in view the framework of Article 16 of the Constitution of India because it was performing a statutory duty and



public function. There is no dispute with regard to the fact Dr.Nazim Hussain Al-Jafri/respondent No.4 was sent any invitation by the Executive Council. It is a case of the respondent university that the Vice-Chancellor straightaway invoked Section 11(3) of the JMI Act, 1988; the appointment of Dr.Nazim Hussain Al-Jafri/respondent No.4 was a matter of grave urgency which cannot brook any delay and thus exercise the power under Clause 8 of Statute 25 of the JMI Act, 1988. Whilst the power of the Vice- Chancellor to use emergency powers in innumerable and unspelt circumstances cannot and ought not to be circumscribed, having regard to harmonious reading of Section 11(3) and Clause 8 of Statute 25 of the JMI Act, 1988 and keeping the larger interest of academic freedom and autonomy, is a complete abuse of power conferred upon the Executive Council by virtue of Statute 25 of the JMI Act, 1988 as the Vice-Chancellor herself is not an expert in the field of Ancient History. In this context reliance is placed on order passed by this Court in LPA 390/2021 titled as *Atul Sood vs. Jawaharlal Nehru University through Registrar & Anr.* wherein it was contended the power of appointment of Chairperson of Centres/Special Centres is expressly conferred on the Executive Council and since the exercise of power by respondent No.2 was in the eyes of law, null and void; the Executive Council could not have approved i.e., ratified the appointments made by respondent No.2. The appellant was aggrieved by the fact that the learned Single Judge of this Court via the impugned order has declined to grant stay qua the appointment of 9 professors who were appointed as Chairpersons of various Centres / Special Centres of the Jawaharlal



Nehru University. However, the Division Bench allowed the appeal in this case.

11. It is further argued submitted the incumbent Registrar and Member / Secretary of the Executive Council who participated in its meeting held on 21.01.2022 and came to be appointed as a Professor of Ancient History in the Department of History & Culture is not a person of high academic distinction and professional attainment as the same is evident from the fact that he started his career from the post of Lower Division Clerk (LDC), and thereafter as Upper Division Clerk (UDC), Section Officer (SO), Assistant Registrar (AR), Deputy Registrar (DR) at Aligarh Muslim University, Aligarh and thereafter as Controller of Examinations in the respondent/University. There is nothing which can be considered as academic distinction as what is required by Clause 8 of Statute 25 of the JMI Act, 1988, a person of high academic distinction and professional attainment and thus the UGC Regulations, 2018 came with an alternative qualification as contained in Clauses 4.0, 4.1(III) and alternative eligibility criteria:

“B. An outstanding professional, having a Ph.D. degree in the relevant/allied/applied disciplines, from any academic institutions (not included in A above) / industry, who has made significant contribution to the knowledge in the concerned/allied/relevant discipline, supported by documentary evidence provided he/she has ten years’ experience.”

12. It is argued Dr.Nazim Hussain Al-Jafri/respondent No. 4 does not possess a single day teaching and / or research experience in the field of history, be it modern or ancient history. Therefore, Clause 8 of Statute 25 of the JMI Act, 1988 need to be read in conjunction with Clauses 4.0, 4.1(III) and Eligibility Criteria: “B” and same has to be supported by



documentary evidence provided s/he has 10 years experience, which has to be considered independently and objectively by a duly constituted Selection Committee in terms of Statute 25 read with Ordinance 15(XV) which utmost provides an exception under S.No.12 that a highly meritorious candidate can be considered by the Selection Committee in absentia.

13. Heard.

14. Admittedly, Jamia Millia Islamia/ respondent University is a Central University established in the year 1920 and was accorded the said status by a Special Act of Parliament (Act No. 58 of 1988) known as '*The Jamia Millia Islamia Act, 1988*'.

15. Admittedly the petitioner is an alumnus of Faculty of Law, Jamia Millia Islamia, in this petition is challenging the appointment of the respondent No. 4 on the post of Professor in the Department of History & Culture by seeking a Writ in the nature of Quo Warranto.

16. As the facts go the respondent/University issued an advertisement dated 01.06.2021, inviting applications for the post of Professor in the Department of History & Culture. However, no candidate was found suitable in the selection process and no appointments were made against the said post.

17. The petitioner is setting up a case by interrelating the advertisement dated 01.06.2021 and the appointment of respondent No. 4 whereas there is no interrelation between the advertisement dated 01.06.2021 and the appointment of respondent No. 4 on the post of Professor. Admittedly the appointment of the respondent No. 4 is altogether a different act/event.

18. As per Section 11(3) of JMI Act, *the Shaikh-ul-Jamia (Vice-Chancellor) may, if he is of opinion that **immediate action** is necessary on any matter, exercise any power conferred on any authority of the University by or under*



this Act and **shall report to such authority** the action taken by him on such matter.

19. The Vice-Chancellor in the exercise of powers vested under Section 11(3) acted on behalf of the Executive Council (EC) and appointed respondent No. 4 as Professor in terms of Statue **25(8)** of the Act, which is as under:

“Notwithstanding anything contained in the foregoing clauses, the Majlis-i-Muntazimah (Executive Council) may invite a person of high academic distinction and professional attainment to accept a post of Professor in the University, on such terms and conditions as it deems fit, and on the person agreeing to do so, appoint him to the post.”

20. The decision of the Vice-Chancellor as mandated in Section 11(3) was placed before the Executive Council (EC) for their approval. The EC in its meeting dated 21.01.2022 approved the appointment of respondent No.4 to the post of Professor and thereafter the respondent No.4 joined his duties.

21. Though the appointment of the respondent No. 4 is in terms of Statue 25 (3), the ground as taken by the petitioner alleging the respondent No.4 does not fulfill the eligibility criteria will not sustain. The respondent No. 4 apart from holding a Ph.D. in Ancient Indian History and Archeology, has also published more than 10 national and international research papers and has also published 5 books.

22. It is stated, the respondent No. 4 has more than 35 years of vast experience in University administration and he has also been given the assignment to act as VC at Khwaja Moinuddin (State) on several occasions. He has served in different universities in following capacities.

“ Educational Qualifications:

1. Ph.D. 1999, A.M.U., Aligarh Title: Geography of Proto-Historic Cultures in India.
2. M.Phil. 1991, A.M.U., Aligarh Title: Copper Bronze Age in Upper Gangetic Valley
3. M. A. in History, in 1983, with 1st Division, and 3rd position, A.M.U, Aligarh.



4. P.G. Diploma in Computer Application, 2002, A.M.U., Aligarh.

Present Position:

1. Professor in the Department of History & Culture
2. Assigned additional responsibilities of Registrar, Jamia Millia Islamia under Statute 5 (3) of JMI

Experiences of University Administration:

1. Registrar, Joint Registrar & Deputy Registrar at AMU, Aligarh (Central University)
2. Project-Officer, Adult and Continuing Education, A.M.U., Aligarh.
3. Registrar and Controller of Examination, Khwaja Moinuddin Chishti Literature, University, Lucknow (State University).
4. Registrar and Controller of Examination, Indira Gandhi National Tribal University, Amarkantak (M.P.) (Central University).
5. Registrar and Controller of Examinations, Jamia Millia Islamia, New Delhi- 110025. (Central University)
6. Coordinator & Assistant Coordinator (Part-time) at Indira Gandhi National Open University Study Centre, Aligarh.

Academia:

Published Books:

1. Geography of "Proto-Historic Cultures in India", Published by Writers Choice, New Delhi, 2018.
2. "History of Proto-Vedic Human Civilization", Published by Indu Book Services, New Delhi, 2015.
3. "Critical Review of the History of Human Civilization and Vedic Period", published by Lambert Publisher Germany, 2014.
4. "Polytheism in Proto-Vedic Africa" published by Indu Book Services Private Limited.
5. Copper Bronze age in upper gangetic Valley published by Academic Publishers New Delhi-2022

Published Research Papers:

1. Revisiting Ochre Colored Pottery Culture in India with Special Reference to Southern Region Culture in Ateet: A Journal of History and Archaeology, No. 1 / Vol. VI / Jan.-June. 2017.
2. Proto-Historic Culture of India Revisiting Ochre Colored Pottery Culture in Journal Global Values, Vol. VIII No. 2, 2017.



3. Cultural Change in Funerary Practices from Harappan to Post Harappan Phases in Proto-Historic India in Ateet: A Journal of History and Archaeology, No. 1 & 2 / Vol. V / Jan.-Dec. 2016.
4. An Archaeological Study of Historical Monuments at Nuh (Haryana), India in Ateet: A Journal of History and Archaeology, No. 1 & 2 / Vol. V / Jan.-Dec. 2016.
5. A Study of Medieval Monuments in Art Historical Perspective in Ateet: A Journal of History and Archaeology, No. 1 & 2 / Vol. V / Jan.- Dec. 2016.
6. Technology of the Chalcolithic Cultures, Proceedings of the Indian History Congress (615) session, Kolkata, 2000.
7. From Harappa to Cemetery- H: Fifty years after the wheeler Hypothesis in Proceedings of the Indian History Congress, Diamond Jubilee (60'*) session, Calicut, 1999.
8. Territory Artifacts Assemblage and Culture- A study of Painted Grey Ware in Proceedings of the Indian History Congress, 59th session, Patiala, 1998.
9. Population Education - Its meaning and concept, in National Journal 'Teacher Today' Vol. 32, NO.4, April -June 1990, Bikaner.
10. Desh Ka Vikas Eyvam Saksharta, Prodh Shiksha, New Delhi, June, 1987.
11. Prospects of Adult Education in Science & Technology - A Study in Rural Development in International Journal Rural System, Vol. IV, No.4, 1986, Banaras).
12. Early Colonisation of the Gangetic Valley and their Chronology Context-Ateet; No. 1&2, Vol. VIII/ Jan.-Dec., 2019. ISSN 2249-1252.

Conferences attended:

International

1. 8th World Archaeological Congress, Kyoto, **Japan**, August 28 - September 02, 2016. Presentation: Development on Indian indigenous land of Nuh (Haryana) India.
2. 7th World Archaeological Congress, Dead Sea, **Jordan**, January 13-18, 2013. Presentation: Burial evidences indicative of cultural changes in 'Proto- Historic' India lasting the early 'Iron Age'.
3. 13th International meeting of University Administrators, **Helsinki**, 19-23 August, 2001. Presentation: Entrepreneurship and



Commercialization in Higher Education in Third World; Case of India.

4. 12th International meeting of University Administrators, **Edinburg**, U.K., 5-9 September, 1999. Presentation: Incentive and Monitoring in Higher Education- The Indian Experience.

National

1. 62nd Session of the Indian History Congress held at Bhopal, 28-30 January, 2001 Presentation: Contextualizing OP Culture.
2. 61st Session of the Indian History Congress, held at Kolkata, 2001. Presentation: Technology of the Chalcolithic Cultures.
3. 60th Session of the Indian History Congress, held at Calicut, 1999. Presentation: From Harappa to Cemetery H: Fifty years after the Wheeler Hypothesis.
4. 59th Session of Indian History of Congress held at Patiala, 28-30 December, 1998. Presentation: Territory, Artefact Assemblage and Culture- A study of Painted Grey Ware.
5. Population Education organized by Delhi University, Delhi, 15-16 May 1990. Presentation: Population Education through Jan Sikshan Nilayam.
6. Role of Youth in Promoting National Literacy Mission Organized by Vishwa Yuvak Kendra, New Delhi, 18-19 September, 1989. Presentation: Educational Needs of a Harijan Basti- A case study of the localities around the campus of Aligarh Muslim University, Aligarh.
7. Legal Literacy through Universities / Colleges organized by University of Poona, 13-15 October, 1985.

Training / Courses Attended:

1. Muslim University, Aligarh at Integral University, Lucknow (U.P.) from 16.01.2016 to 17.01.2016.
2. Attended "Management Development Program" organized by Jamia Millia Islamia Attended Short Term Course on "Academic Leadership" organized by MHRD, Govt. of India, UGC Human Resource Development Centre, Aligarh in Collaboration with University Grants Commission, New Delhi from 06.04.1993 to 30.04.1993.
3. Attended Second "Management Development Program on Management System" organized by the Department of Business Administration, Aligarh Muslim University, Aligarh, November 2-19, 1992.



4. Attending training / orientation course for key level functionaries organized by the Indian Adult Education, Association, New Delhi, 17-22 December, 1987.

23. The petitioner claims the appointment of respondent No. 4 is irregular and illegal as it is violative of Articles 14 and 16 and it is undisputed that the person to be appointed as a professor must be an *eminent scholar* or *outstanding professional* who has made a significant contribution to the concerned/allied/relevant discipline, supported by documentary evidence. It is submitted apart from the above-mentioned laurels that the respondent No. 4 possess academic/research score and after assessing his profile, his score was calculated to be '**188.4**' which is a considerably good score; whereas the minimum requirement as notified by the UGC to become a professor is **120** points.

24. Moreover, even otherwise, the UGC regulations namely "*UGC regulations on minimum qualifications for appointment of teachers and other academic staff in universities and colleges and measures for the maintenance of standards in higher education 2018*" specifically state under 4.1.(III)(B) "*An outstanding professional, having a Ph.D. degree in the relevant/allied/applied disciplines, from any academic institutions (not included in A above) / industry, who has made significant contribution to the knowledge in the concerned/allied/relevant discipline, supported by documentary evidence provided he/she has ten years' experience*".

25. A conjoint reading of Statute **25(8)** and Section **11(3)** of the Act makes it abundantly clear the VC can act on behalf of the EC and if the authority (EC) is of opinion that such action ought not to have been taken, it may refer the matter to the visitor whose decision thereon shall be final. Moreover, the Section also provide if any person in the service of the University *who is aggrieved by the action taken by the VC* under this sub-section **11(3)** *shall have*



the right to appeal against such action to the EC within three months from the date on which decision on such action is communicated to him and thereupon EC may confirm, modify or reverse the action taken by the VC.

26. The petitioner referred to '*Atul Sood v. JNU & Anr.*' LPA 390/2021 where the appeal was directed against an interlocutory order dated 28.09.2021, passed by the learned single judge in W.P.(C) No.1879/2021 declining to grant stay qua the appointment of nine professors, who were appointed as Chairpersons of various Centers/Special Centers by the VC in terms of Statute 4(5) of the Statutes of the University. However, the cited case differs from the present case in hand on the point that present is a case of appointment of Professor whereas in the case of JNU the VC therein appointed professors as chairpersons under clause 18 (2) (c) (I) of JNU Statute. While in the present case, the VC invoked Clause 11(3) read with Statute 25 (8), which empowers her to take the decision on behalf of the EC and the same was ratified by the EC for appointment of Respondent No. 4 as Professor. Moreso, the petitioner in the case of JNU, Mr. Atul Sood was himself an employee of JNU and he was aggrieved by the action of the University. However, the petitioner in the present case is not *an aggrieved person* or *an Employee* or has any *relation* or *connection* with JMI.

27. Further the respondent has shown instances wherein several appointments have been made *mutatis mutandis* to the post of Professor across Universities in the Country including JMI viz,

- a) Dr. Sandeep Banerjee who was the secretary of the UGC (IAS officer) was appointed as a professor in the exercise of powers under section 11(3) read with Statute 25 (8) in Jamia Millia Islamia;
- b) Dr. Ajay K. Mehra who was a reader in Political Science, Shaheed Bhagat Singh College, was appointed as a professor in the exercise of powers under section 11(3) read with Statute 25 (8) in Jamia Millia Islamia; and



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- c) Dr. Mirza Mohammad Sufyan Beg, who was appointed as a professor in the exercise of powers under section 11(3) read with Statute 25 (8) in Jamia Millia Islamia.

28. Similar circumstances can be seen in Aligarh Muslim University and Maulana Azad National Urdu University.

29. In view of the above there is no case made out for the issuance of notice to the respondent, thus, the petition is accordingly dismissed. Pending application(s), if any, also stand disposed of.

February 21, 2022
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YOGESH KHANNA, J.



सत्यमेव जयते