

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

% **Reserved on: 6th September 2022**
Pronounced on: 18th November 2022

+ **W.P.(C) 1453/2014**

SURENDER SINGH RAWAT Petitioner

Through: Mr. Mayank Wadhwa and
Ms. Muskan Gupta, Advocates

versus

JAMIA MILIA ISLAMIA UNIVERSITY Respondent

Through: Mr. Pritish Sabharwal, Standing
Counsel with Mr. Aamir, Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition has been filed under Article 226 of the Constitution of India by the petitioner seeking the following reliefs:

“i) Issue a writ of Mandamus or a writ in the form of Mandamus commanding/directing the Respondent to recognize and grant the status of a Teacher to the petitioner with all seniority and also to pay and release his monthly salary/other emoluments for the entire period from the date of initial appointment as per the timely recommendations of the Pay Commission.

ii) Award cost for this Petition with the further request to pass any other order(s) or direction(s) or grant any other

relief(s) as deemed fit and proper in the circumstances of the facts of the case.”

FACTUAL MATRIX

2. Respondent was a registered society under the Societies Registration Act, 1860, named as ‘Jamia Millia Islamia Society, Delhi’ which vide the Jamia Millia Islamia Act, 1988 (hereinafter referred to as “the Act”) was dissolved and all properties and rights of the said Society stood transferred and vested in the said University being incorporated and established named as the ‘Jamia Millia Islamia’ (hereinafter referred to as the “Respondent University/JMI”).

3. At present, the respondent university is a Central University and primarily governed by the said Act and the statutes therein and is fully funded by the University Grants Commission (hereinafter referred to as the “UGC”).

4. Petitioner was engaged by the Respondent University for rendering his services as a Sports Coach by way of Agreement dated 20.11.1987 and vide office communication dated 22.06.1990, his services were confirmed and he was duly appointed with effect from 17.12.1988.

5. It has been contended in the petition that representations were made by the petitioner to the respondent from time to time i.e., on 06.05.2008 and 30.03.2012 to grant him the status of a teacher and to treat him at par *inter alia* in terms of payment of salary and emoluments as per the pay scale of teacher.

6. The petitioner being a Sports Coach is thus aggrieved by not being considered at par with teacher and has approached this court by way of the instant petition praying for being considered as a teacher and for receiving all the emoluments that a teacher is entitled to.

SUBMISSIONS

Petitioner's Submissions

7. Mr. Mayank Wadhwa, learned counsel appearing for the petitioner submitted that the petitioner was put into services by the erstwhile society of Respondent University under Agreement dated 20.11.1987 as Jamia Teacher with the basic pay scale of Rs. 1400-40-1600-50-2300-EB-60-2600 per month excluding usual allowances at the rates admissible under the Rules of Jamia Employees. It is submitted that upon the completion of probation period, vide office communication dated 22.06.1990, the services of the petitioner were confirmed and he was duly appointed with effect from 17.12.1988.

8. It is further stated that the Respondent University, being biased against the petitioner, started categorising the petitioner as Sports Coach only and not as a whole-time teacher, which was completely in violation of appointment terms. The Respondent University also started paying the monthly salary which was not at par with the entitlement of a teacher according to the Rules and also contrary to the recommendations of the Pay Commissions.

9. It is contended by the learned counsel for the petitioner that under the provisions of the Act, the petitioner is entitled to being treated at par with a teacher and the same pay and emoluments.

10. It is submitted that the petitioner made representations dated 06.05.2008, and 30.03.2012 to treat him as teacher and also for being granted the revised pay scale, both of which remained unattended.

11. It is submitted that the petitioner has also furnished a circular No.9-12/91-U.F.I. dated 24.09.1992 from the office of the Secretary, Ministry of Human Resource Development (Department of Education) furnishing the decision that the Sports Coaches are to be treated as Teachers and shall be given all benefits as granted to the Teachers from time to time.

12. While buttressing his arguments, reliance has also been placed by the learned counsel for the petitioner on the judgment of the Hon'ble Supreme Court in ***P.S. Ramamohana Rao Vs. A.P. Agricultural University***, AIR 1997 SC 3433, wherein it was held that Physical Education Director can be treated as teacher under the Andhra Pradesh Agricultural University Act, 1963 with the observations that a Physical Education Director guides the students about the rules of various games thus enabling them to participate.

13. It is submitted that the Hon'ble Supreme Court in the said case further observed that students require guidance with several skills and techniques and the Physical Education Director imparts the requisite training. Reliance has also been placed by the learned counsel on various judgments of High Courts in support of his contentions. It is further

submitted that the respective universities/institutions against which the judgments have been passed have acted upon and have given the status of a teacher to Sports Coaches.

14. It is stated that the petitioner from the day of his appointment as Teacher has been rendering his services with utmost sincerity and devotion and there has not been any occasion for any negative remarks against the competence of the petitioner and for the jobs assigned to him throughout his career.

15. Learned counsel for the petitioner has also furnished a comparative chart depicting the difference in the monthly salary/ allowances paid to him and what he was entitled to as a teacher. The chart is reproduced hereunder:

Pay Scale	To Lecturer/ Teacher	To Petitioner
4 th Pay Commission	2200-4000	1400-2600
5 th Pay Commission	8000-275-13500	5500-175-9000
6 th Pay Commission	15000-39100 Grade Pay 6600 PB-3	9300-34800 Grade Pay 4600

16. It is thus submitted that the petitioner is entitled to the status of a teacher with all seniority and consequent benefits, monthly salary and emoluments which the Respondent University is denying. In view of the

aforesaid, it is submitted that the petitioner has no other efficacious remedy than to approach this Court by way of the instant petition.

Respondent's Submissions

17. Mr. Pritish Sabharwal, learned counsel appearing for the Respondent submitted that JMI is a Central University primarily governed by the Act and fully funded by the UGC. It is stated that by way of the instant petition, the petitioner is seeking relief for being granted the benefits and entitlements available to a teacher despite being a sports coach and not a teacher.

18. It is submitted that as per the University ordinance, the teachers in the university system are classified as Assistant Professors, Associate Professors, and Professors. Further, the letter of the UGC dated 31.12.2008 states that there shall be no change in the present designation in respect of Library and Physical education personnel at various levels. Thus, it is stated that it is crystal clear that the petitioner who is a sports coach cannot be accorded the status of a teacher.

19. It is further submitted that in the letter No. 1-32/2006-UII/U.I(1) dated 31.12.2008 issued by the Ministry of Human Resource Development to UGC it is stated, in clause (I) in category titled under "General", that there shall be only three designations in respect of teachers in universities and colleges namely, Assistant professors, Associate professors and Professors. It is stated that there shall be no change in the designation in respect of Library and Physical Education personnel at various levels.

20. It is submitted that vide the said notification issued by the Ministry of Human Resource Development addressed to the secretary of UGC, it has been stated as under: -

“1. General

(1) There shall be only three designations in respect of teachers in universities and colleges, namely, Assistant Professors, Associate Professors and Professors.

However, there shall be no change in the present designation in respect of Library and Physical Education Personnel at various levels.”

21. It is submitted that the petitioner was appointed as a Sports Coach by selection committee in its meeting dated 20.10.1987, the composition of which was materially different from that of teachers viz. Lecturers, Readers and Professors. It is further submitted that the qualification of the petitioner at the time of his consideration as a Sports Coach, was only graduation with a certificate in Basketball from National Institute of Sports, Patiala. It is further submitted that he had completed his Higher Secondary education in 1976 with 39% marks and BA in 1979 with 52% marks. It is submitted that the qualifications of petitioner were unimaginably low for being treated as a Lecturer. The pay scale for a Sports Coach, as notified then, was Rs. 1400-2600 while that of a Lecturer was Rs. 2200-4000. The qualifications for the post of a Lecturer at that point of time was a Ph.D.

22. It is submitted that the letter of confirmation of petitioner dated 22.06.1990 does not contain anything to prove that the petitioner is a wholetime teacher at the university. The age of superannuation of a Sport

Coach is 60 years. The petitioner has already superannuated in 2017 by the University.

23. It is submitted that the petitioner is being paid salaries in accordance with the Notifications of the UGC. In the Respondent University, Physical Education/Sports is not a teaching subject nor any degrees are accorded in the same. The nature of duties being performed by the Sports Coach is to coach the sporting teams of the University which is not the same as that of duties of a teacher.

24. It is also stated that the petitioner is not imparting instruction, neither is conducting research nor is designated as a teacher by the Ordinances of the University.

25. It is submitted that the definition of teacher is specifically defined in the Act. Furthermore, Section 2(n) of the Act defines a "teacher" to mean "Professors, Readers, Lecturers and persons as may be appointed for imparting instruction or conducting research in the University and are designated as teachers by the Ordinances". It is also stated that the University Ordinance placed on record under Ordinance 5(v) clearly defines teachers as Assistant Professors, Associate Professors and Professors.

26. At this juncture, reliance is placed on various judgments including the ruling of this Court in W.P. (C) 7939/2011 in ***Damayanti V. Tambay vs. Union of India & Ors.*** to submit that the Physical Educators cannot be accorded the status of a teacher. It is further contended while relying on a set of judgments including ***Meera Sood vs. University of Delhi &***

Ors. 2021 SCC OnLine Del 4939, Swarn Bhanot vs. University of Delhi & Ors. W.P.(C) 8597/2009, decided on 26.03.2019, *Suresh Kumar Sud & Ors vs. UOI & Ors. W.P. (C) No.3129/2008, Jitendra Singh Naruka v. University of Delhi & Ors. 2016 SCC OnLine Del 5893* and *Shri Sushma Gupta vs. Indian Institute & Ors, 2015 SCC OnLine Utt 2027* that when a particular benefit given to one class is extended to another, that would not mean that same be treated as same class for all purposes and in every respect. Thus, two distinct services cannot be similar merely because the services of one class of persons were availed by another class.

27. In view of the aforesaid, it is submitted that the instant petition is frivolous, devoid of merits and hence, is liable to be dismissed.

28. Heard learned counsels for the parties and perused the record.

ANALYSIS

29. The only question for consideration and adjudication in the instant matter is - whether the petitioner while contributing his services as a Sports Coach to the Respondent University/JMI can be treated at par with a teacher, and thereby be entitled to the benefit that are accruable to a teacher.

30. Having formulated the issue for adjudication and before delving deeper into the facts of the case, it is pertinent to peruse various judgments passed by the Hon'ble Supreme Court and High Courts from

time to time, on the issue of equal pay for work and when can the same be applied.

31. A similar issue - whether Librarian/Deputy librarians and Director of Physical Education are at par with teachers or "teachers involved in classroom teaching" - also arose before the Committee of Experts, comprising of Senior Officials of the UGC, Vice Chancellor of Central University of Himachal Pradesh and Registrar of Jawaharlal Nehru University, constituted by the Division Bench of this Court while adjudicating W.P. (C) No. 7130/2011 titled ***Krishan Gopal Vs. Union of India and Others*** and W.P. (C) No. 7939/2011 titled ***Damayanti V. Tambay Vs. Union of India and Others***, disposed of by a common judgment dated 18.05.2012. These writ petitions were filed by employees of Jawaharlal Nehru University, who were working as Deputy Librarians and Directors of Physical Education. They were seeking a declaration that their status should be treated as that of teachers and hence the notification dated 31.12.2008, by which the retirement age of teachers was enhanced to 65 years would be applicable to the Deputy Librarians and Directors of Physical Education.

32. The Division Bench examined the semantics and the meaning of the term 'teacher' and whether this term would include professionally qualified library staff and Directors of Physical Education. After extensively referring to a plethora of judgments, it was held as under:

"26. First question would be as to whether DPEs and Librarians can be treated as 'teachers' for all purposes and are therefore at par?"

*Much material is placed by Mr. Mukund and Dr. Sarabjeet Sharma, learned counsel who appeared for the two petitioners, on the basis of which it is sought to be impressed upon that the Librarians and DPEs also qualify as teachers and are not different from other teachers. We are afraid such a conclusion cannot be arrived at. UGC's letter dated 18.1.1991 to the Registrar of Delhi University only extends the benefit, which was granted to teachers, to the Library staff as well 'for the purpose of salary revision'. When a particular benefit given to one class is extended to another, that would not mean that same be treated as same class for all purposes and in every respect. It becomes clear from the pronouncements of the Supreme Court where the two classes, namely, teachers on the one hand and Librarians/DPEs on the other, came to be considered while deciding the pay parity. The Supreme Court in the case of **State of M.P. v. Ramesh Chandra Bajpai** (supra) refused to grant the claim of pay parity of DPEs with that of teachers in the following words:*

“15.It is well settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity (sic. Similarly) in the designation or nature or quantum of work is not determinative of equality in the matter of pay scales. The court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts.”

33. In the aforesaid judgment, the Division Bench on the basis of the pronouncements concluded that there were two distinct classes involved: (i) Teachers, and (ii) Librarians and/or Directors of Physical Education. It further elucidated as under:

27. Thus, the principle of 'Equal Pay for Equal Work' was not made applicable while comparing the two classes, categorically holding that there was disparity. In this process, the Supreme Court also distinguished the judgment of P.S. Ramamohana Rao (supra), which is relied upon by the petitioner, on the ground that that judgment was based on definition of 'teacher' as defined in section 2(n) of the Andhra Pradesh Agricultural University Act. Obviously, position would be different when legislature itself, by definition, accords parity between those imparting educational instructions and those imparting physical education. On this basis, even Delhi University has taken this position taking note of the definition of 'teacher' as stated in the University of Delhi Act, 1922 as per which Librarians are 'teachers' under the category of 'other persons' imparting instructions in universities or in college or hall. Likewise in **State of Karnataka v. C.K. Pattamashetty** (supra), the Supreme Court took into consideration the definition of 'teacher of the university' under Section 2(8) of the Karnataka State University Act. Thus, if the legislature has equated the two classes, then the status of teacher is granted to such DPEs and Librarians by the Statute. De hors that, it would be difficult to say that all such DPEs and Librarians are to be treated as teachers per se."

34. The Committee of Experts was constituted to look into the issue of enhancement of age of superannuation from 62 to 65 years of Deputy Librarian and Deputy Director of Physical Education. While deciding the same, the Committee also examined the method of recruitment, function, nature of duty and responsibilities etc. of Deputy Librarian/ Librarian/ Director of Physical Education and that of teachers - Lecturers, Assistant Professor/ Associate Professor/ Professor.

35. In the case of **Vimal Prasad and Ors. Vs. Union Of India (UOI) and Ors. MANU/DE/0201/2008**, this Court has also held that:

"Whether two post are equal or should carry equal pay depends on several factors. Primary it requires evaluation of duties and responsibilities of respective posts by competent authorities constituted for the purpose and courts cannot ordinally substitute themselves in place of those authorities. The Quantity of work may be same but quality may be different. Expert bodies like pay commission and the Government would be the best judges to evaluate nature of duty, responsibility and all relevant factors must determine it."

36. In the case of ***State of M.P. v. Ramesh Chandra Bajpai, (2009) 13 SCC 635***, the Hon'ble Supreme Court held that it is a settled law that Article 14 carries with it a positive concept of equality and that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. It was further held therein that, even if there is a similarity in designation, or nature, or quantum of work, it is not determinative of equality in the matter of pay scales. Rather, the Court has to consider factors like the source and mode of recruitment/appointment, qualifications, nature of work, value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. Thus, it is undisputed that equality as a principle, especially in terms of pay scales, can be invoked only when there is wholesale identity between the holders of two posts.

37. Having considered the aforestated judgments, it is pertinent to note that as has been submitted by the Respondent University and remains unrebutted, the petitioner was appointed as a sports coach by selection committee in its meeting dated 20.10.1987, the composition of which was materially different from that of the selection committee for teachers viz. Lecturers, Readers and Professors.

38. It is uncontested that the minimum qualifications that would be applicable to a Sports Coach are not comparable to a teaching staff be it Assistant Professor or even Lecturer. The same is true for even the nature of work, method of recruitment, functions, conditions of service, etc. for the two designations. As such, these two form distinct classes in themselves and any parity, if drawn, would not be warranted since they are not even provided in terms of the statutory scheme or relevant circulars.

39. As is evident from the discussion hereinabove, it is clear that the principle of equal pay for equal work is applicable only when the two designations are functionally and structurally identical. However, in the instant case, there is a clearly laid out distinction between the two positions – Sports Coach vis-à-vis Teacher at the Respondent University. This distinction is prevalent in terms of various parameters including but not limited to mode of recruitment, qualifications, nature of work, pay scale, age of superannuation, and conditions of service.

40. At this juncture, it is pertinent to peruse the relevant provisions of the Act pertaining to the definition of “teacher”. Section 2(n) of the Act reads as under:

““Teachers of the University” means Professors, Readers, Lecturers and such other persons as may be appointed for imparting instruction or conducting research in the University and are designated as teachers by the Ordinances;”

41. As is evident from a bare perusal, the requirement for an individual who is not a Professor/Reader/Lecturer, to be considered a teacher is twofold:

- a. Such persons must be appointed for imparting instructions or conducting research in the University; and
- b. Such persons must be designated as teachers by the Ordinances.

42. In the instant case, the first requirement is not met since sports/physical education, as claimed by the Respondent University and remains unrebutted by the petitioner, is not a discipline that is being taught by the Respondent University and the only purpose of a Sports Coach, as submitted, is to coach the sports team of the University on field for participation in various competitions. As such, in light of these facts, the Sports Coach cannot be said to be imparting instructions or conducting research in the University.

43. Even if, for a moment, it is assumed that the Sports Coach indeed imparts instructions to the students for excelling in sports and for bringing laurels to the University in various sports competitions still, the second requirement being that of the designation as a Teacher by the Ordinances of the University is not satisfied.

44. Ordinance 5(V) of the Respondent University dealing with Leave Rules has been placed on record, wherein Rule 4 dealing with 'interpretations' states as under:

“i). “Teachers” means Professors, Associate Professor, Assistant Professor and such other person as may be appointed for imparting instruction in the University and are designated as Teachers by the Ordinances and who are entitled to Summer Vacation.”

45. Therefore, it is also clear from the discussion hereinabove that the scheme of the governing Act and ordinances of the respondent University do not provide for considering a Sports Coach as a teacher and hence, no question of granting identical consideration regarding entitlement to a Sports Coach at par with teacher arises.

46. This Court has also perused the relevant letter of Ministry of Human Resource Development, as it then was, dated 31.12.2008 addressed to the Secretary of University Grants Commission pertaining to “Scheme of revision of pay of teachers and equivalent cadres in universities and colleges following the revision of pay scales of Central Government employees on the recommendations of the Sixth Central Pay Commission”. The said circular clearly lays down that there shall be only three designations in respect of teachers in universities and colleges, namely, Assistant Professors, Associate Professors and Professors. Thus, the same does not come to the rescue of the petitioner.

47. It is also observed that in the instant case, the petitioner began rendering his services in the year 1987, however the first representation was made by him for being considered as a teacher only in the year 2008. Even the petition before this Court was filed only in the year 2014 just before three years of his superannuation in the services.

48. This Court has perused the rulings in the set of judgments cited by the petitioner including *Sivasankara Kaimal v. University of Calicut, 2002 SCC OnLine Ker 122*, *Laxman Singh Rathore v. Rajasthan Agri. University, Bikaner, 2014 SCC OnLine Raj 2943*, and *Cochin University of Science & Technology v. Joseph James, 2005 SCC OnLine Ker 326*, wherein identical questions were dealt with. The set of judgments cited are distinguished on multifarious grounds including that the universities in question in those judgments were majorly State Universities created by State Legislature, whereas the instant university is a Central University created by Act of Parliament; again, the statutory definition of teacher in those set of statutes and in the instant JMI Act are different; nor is sports/physical education being taught as a discipline in the Respondent University; and the factual position in the instant case as discussed in the foregoing paragraphs has already been laid down as being distinct. Therefore, the instant case is carved out as being distinguished from the set of cases cited by the petitioner and hence, those rulings in as much as they are distinguished are not applicable to the instant case and hence, do not help the case of the petitioner.

CONCLUSION

49. Summing up the discussion made hereinabove, and in light of the peculiar facts and circumstances of the case, it is evident that the petitioner is not entitled to the benefits that are accruable to a teacher for the reasons as enumerated hereunder:

firstly, the principle of equal pay for equal work is not applicable because of a clearly laid out distinction between the two positions – Sports Coach vis-à-vis teacher at the Respondent University in terms of various parameters including but not limited to mode of recruitment, qualifications, nature of work, pay scale, age of superannuation, and conditions of service;

secondly, the scheme of the governing Act and ordinances of the respondent University do not provide for considering a Sports Coach as a teacher and hence, no question of granting the same consideration regarding entitlement to a Sports Coach same as applicable to teacher arises;

thirdly, sports/physical education, as claimed by the Respondent University and remains unrebutted by the petitioner, is not a discipline that is being taught by the Respondent University and the only purpose of a Sports Coach, as submitted, is to coach the sports team of the University on field for participation in various competitions. Hence, the Sports Coach cannot be *strictu sensu* be said to be imparting instructions and neither the sports coach has been designation as teacher as statutorily required; and

fourthly, as is well-known – “*vigilantibus non dormientibus jura subveniunt*” – equity helps the vigilant and not the indolent i.e., equity comes to the rescue of those who approach the court

for their rights within time and not to the rescue of those who slumber over their rights. In the instant case, the petitioner began rendering his services in the year 1987, however it is only after a passage of more than 20 years in service as Sports Coach that he made his first representation to the Respondent University in 2008, and, approached this Court with the instant petition in 2014 at the fag end of his services just to attain the benefits that a teacher is entitled, just before being superannuated in 2017.

50. In view of the aforesaid, this Court is of the opinion that the reliefs as being claimed in the instant petition cannot be allowed and hence, this Court is constrained to dismiss the petition. The instant petition is accordingly dismissed.

51. Pending application, if any, also stands disposed of.

52. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

NOVEMBER 18, 2022
Aj/@dityak.