

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

% **Date of order : 27th October 2022**

+ **W.P.(C) 8498/2008**

KHALID KAMAL FARUQI Petitioner

Through: Mr. Pratyush Sharma and Mr. Ajam
Walik, Advocates along with the
petitioner in person

versus

JAMIA MILLIA ISLAMIA & ANR. Respondents

Through: Mr. Pritish Sabharwal, Standing
Counsel with Mr. Mohit Gupta,
Advocate
Mr. Apoorv Kurup and Ms. Aparna
Arun, Advocates for R-2/UGC

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

“a) Issue an appropriate writ order or direction holding that the post of Archivist in the Jamia Millia Islamia University is equivalent to the post of Deputy Librarian and that the placement pay scale of Rs.14,940/- , age of retirement of 62 years and career advancement scheme as applicable to the post of Deputy Librarian is also applicable to the post of Archivist;

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b) Issue an appropriate writ order or direction quashing the office orders dated 19.2.2007 and 15.10.2008 whereunder the Respondent no.1 University has denied the benefit of enhanced age of superannuation of 62 years to the petitioner and direct the respondent no.1 University to take the petitioner back in service and permit him to serve in the post of Archivist till the age of 62 years and to grant to the petitioner all consequential benefits of pay and allowances that have been denied to the petitioner due to his illegal retirement at the age of 60 years on 31.7.2007 by the respondent no.1 University;

c) issue an appropriate writ order or direction directing the respondent no.1 University to grant to the petitioner placement scale of Rs.14,940/- as has been granted to the post of Deputy Librarian in the respondent no.1 University w.e.f. 1.1.1996 with all consequential benefits; and

d) Pass such other further order /orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.”

2. The petitioner was appointed as an Assistant Librarian on 23rd August 1967 on regular basis and, subsequently, on 10th April 1991, he was appointed as an Archivist with the respondent no. 1 University.

3. The petitioner retired from the respondent institution on 31st July 2007 upon attaining the age of 60 years. The petitioner made several representations to the respondent seeking the change of retirement age from 60 years to 62 years relying upon letter issued by the respondent no. 2/ University Grants Commission (hereinafter “UGC”) dated 17th November 1984 and 13th January 2000, and of Government of India dated 16th November 1999 alongwith other notifications and parity amongst the post of

Archivist and Deputy Librarian, both prior to and post his retirement. However, on 15th October 2008, the respondent no. 1 rejected all the representations filed by the petitioner stating that the enhancement of age was not applicable to the post of University Archivist, i.e., the post to which the petitioner was appointed.

4. The petitioner has approached this Court aggrieved by the decision of the respondent no. 1 to retire him at the age of 60 years, their rejection of his representations and is also seeking same pay scale as the post of Deputy Librarians.

SUBMISSIONS ON BEHALF OF THE PETITIONER

5. Learned counsel appearing on behalf of the petitioner submitted that the action taken by the respondent no. 1 of retiring the petitioner at the age of 60 years and denying the appropriate pay scale is arbitrary and illegal. It is submitted that the respondent no. 2 decided to set up archival cells in certain universities and stated that the posts sanctioned for the purpose would be borne on the library cadre. This decision was also communicated to the respondent no. 1 vide letter no. F-22-2/81. It is submitted that post of Archivist borne on the library cadre was to be equivalent to the post of Deputy Librarian.

6. It is submitted that vide letter dated 17th November 1984, the respondent no. 2 conveyed its approval to Central Universities, including the University before this Court, for extension of Merit Promotion Scheme subject to declaration of the Librarians/Deputy Librarians as teachers. It is submitted that on the basis of this communication, the respondent no. 1

decided to extend the Merit Promotion Scheme to the cadre of librarians in the University and therefore, the Executive Council of the University resolved that Assistant Librarians of University be declared 'teachers'.

7. Learned counsel for the petitioner heavily relied upon the Notification by the respondent no. 2 on Revision of Pay Scales, minimum Qualification for Appointments of Teachers in Universities, Colleges & Other measures for Maintenance of Standards, 1998 (hereinafter "UGC Notification of 1998") wherein the following provision is made:-

"16.0.0 SUPERANNUATION AND RE-EMPLOYMENT OF TEACHERS

16.2.0 Age of retirement of Registrars, Librarians, Physical Education personnel, Controller of Examinations, Finance Officers and such other university employees who are being treated at par with the teachers and whose age of superannuation was 60 years, would be 62 years. No re-employment facility is recommended for the Registrars, Librarians and Directors of Physical Education."

8. It is submitted that after working in various capacities, the petitioner was appointed as Archivist in the University Library and was placed in the pay scale of Rs. 3700-5700, which was equivalent to the scale of Deputy Librarian. He was also placed in senior scale under Career Advancement Scheme 1987 vide order dated 6th January 1992 and was also appointed as the member of Board of Studies for Library & Information Science Course. He was assigned the duties of invigilation at University Examinations. Moreover, the petitioner officiated as University Librarian for more than two years on the basis of experience as Deputy Librarian. It is also

submitted that the petitioner in the capacity of University Archivist also performed the task of a teacher and taught paper-IV, Library Cataloguing CCC in Bachelors of Library & Information Science Course at the respondent no. 1 University. Hence, it is evident that the petitioner possessed the required qualifications and eligibility to be considered for parity with the post of Deputy Librarian for the purposes of pay scale and retirement age, since at several occasions he was treated at par with the Deputy Librarian, or be covered under the category of '*and such other university employees who are being treated at par with the teachers*' as stipulated under the UGC Notification of 1998.

9. It is also submitted that the respondent no. 1 failed to appreciate its Ordinance XXIII which states that the post of Archivist is a part of Academic Staff of the University and has been assigned teaching and invigilation duties by the respondent no. 1. Therefore, the post of Archivist was at par with the post of Deputy Librarian.

10. It is submitted that the Government of India in its letter dated 16th November 1999 clarified to the respondent no. 2 that the age of retirement of Librarian, Deputy Librarian and Assistant Librarian in the respondent no. 1 University is 62 years, which was further communicated by the respondent no. 2 to the respondent no. 1, however, the respondent no. 1 failed to make the same applicable on the petitioner. The respondent failed to appreciate that the pay scale of the petitioner was identical to that of the Deputy Librarian at the time of his appointment and therefore, there existed parity among the two posts.

11. It is argued on behalf of the petitioner that the petitioner applied for appointment at the Jamia Hamdard University at the post of University Librarian where a minimum of 13 years' experience as a Deputy Librarian was required. The petitioner, by meeting the said qualification, was found fit for appointment on deputation terms. Respondent no. 1, in terms of letter dated 19th September 2003 and 26th September 2003, permitted the petitioner to join Jamia Hamdard University on deputation basis for three years.

12. It is submitted that to claim his right for being treated at par with the aforesaid posts, the petitioner made representations to the respondent no. 1 on 4th March 2003, 27th July 2004, 31st October 2006 and 18th November 2006, 9th March 2007, 25th April 2007 and 25th July 2007 seeking fixation of pay at a minimum of Rs. 14940/- and enhancement of retirement age to 62 years. It is argued that without considering the representations made by the petitioner, the respondent no. 1 issued Office Memorandum dated 19th February 2007, wherein it was stated that the petitioner would retire from services of University on 31st July 2007 upon attaining the age of 60 years.

13. Learned counsel for the petitioner submitted that again on 3rd April 2007, the respondent no. 2 issued a letter to the respondent no. 1 stating therein that the age of retirement of Librarian, Deputy Librarian and Assistant Librarian would be 62 years. Upon receiving the communication and the representations of the petitioner, respondent no. 1 wrote to respondent no. 2 enquiring about the age of superannuation and whether the age of 62 years was applicable to the post of University Archivist. Learned counsel for the petitioner pointed out that, vide its letter dated 22nd August

2008, the respondent no. 2 in answer to the query of respondent no. 1 as to whether the enhanced superannuation age would be applicable for the post of Archivist, gave the liberty to the respondent no. 1 to decide the same at its own level as per the UGC norms.

14. It is submitted that the petitioner made further representations on 10th August 2007 and 21st August 2007 to the respondent no. 1 *qua* the issue of payment scale and superannuation age, however, no response was received from the respondent no. 1 and ultimately, the petitioner superannuated on 31st July 2007 in violation of the norms laid down.

15. It is submitted that a reminder on 27th August 2007 and subsequent representations on 5th September 2007 and 19th September 2007 were made by the petitioner challenging the superannuation at the age of 60 years. The petitioner also sent reminders dated 4th January 2008, 19th March 2008, 7th April 2008, 16th June 2008 and 28th August 2008.

16. Learned counsel for the petitioner submitted that on said representations made by the petitioner, the respondent no. 1 communicated its letter dated 15th October 2008, whereby, the University rejected all the aforesaid representations and stated that the enhanced age of retirement, i.e., 62 years was not applicable to the post of University Archivist. It is submitted that the respondent no. 1 in this communication did not assign any reason for rejecting the representation of the petitioner.

17. Learned counsel for the petitioner relied upon the judgments of ***Dildar Haider vs. Jamia Millia Islamia, W.P. (C) 2829/2003*** decided on 18th August 2006, ***Shafiq Ain Usmani vs. Jamia Millia Islamia, W.P. (C)***

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21367/2005 decided on 16th May 2008, *Krishan Gopal vs. Union of India and Ors.*, **2012 SCC OnLine Del 2930**, *State of Uttar Pradesh vs. Dayanand Chakrawarty and Ors.*, (2013) **7 SCC 595** and *Ran Singh Malik vs. State of Haryana and Ors.*, (2002) **3 SCC 182** to give force to his arguments.

18. In light of the arguments as delineated above it is submitted that the petitioner is entitled to the benefits as prayed by him.

SUBMISSIONS ON BEHALF OF RESPONDENTS

19. *Per Contra*, learned counsel appearing on behalf of the respondents vehemently opposed the arguments advanced on behalf of the petitioner and submitted that the petitioner was never entitled to the enhancement of superannuation age from 60 to 62 years.

20. Learned counsel appearing on behalf of the respondent no. 1 submitted that the reliance upon Clause 16.2.0 of the UGC Notification of 1998 by the petitioner is wholly misconceived and erroneous in so far as it extends the benefits of retirement age to ‘teacher’ and those at par with teachers, being Registrars, Librarians, Physical Education personnel, Controller of Examinations and Finance Officers. The post of Archivist cannot in any manner be treated to be at par with that of a teacher. Moreover, the respondent no. 2 has also clarified that age of superannuation of Assistant Librarians, College Librarians would be 62 years and Archivist was not included in the category of staff entitled to the enhanced age of superannuation.

21. Learned counsel appearing on behalf of the respondent no. 1, placing reliance upon the Ordinance as notified on 9th November 2017, which provided that the retirement of employees shall be 60 years or as notified by the UGC from time to time, submitted that since there has been no challenge to the said direction by the Government of India, there exists no claim in favour of the petitioner.

22. Learned counsel for the respondent no. 1 submitted that equivalence to another post, i.e., Deputy Librarian, for the purposes of pay scale does not imply entitlement to all the benefits at the post held by the petitioner. At the relevant time, when the petitioner was discharging the duties as Head of Department of Bachelor of Library & Information Science Course he was only officiating as a Librarian. He was never appointed as a teacher and moreover, the teaching duties performed by the petitioner were not a part of his duties as an Archivist. He was assigned these duties for which he was also paid extra remuneration in addition to his salary as an Archivist. It is also submitted on behalf of the respondent no. 1 that reliance upon letter from Jamia Hamdard University to submit that the petitioner was considered for the post of University Librarian on the basis of 13 years' experience as Deputy Librarian is also misplaced and misconceived since, firstly, the respondent no. 1 has no relation to the said private University and secondly, the petitioner was only appointed on deputation basis as a University Librarian at the said University and was never appointed on the regular post.

23. It is submitted that the decision regarding the age of retirement of the petitioner was based on the Notification of UGC and therefore, there is no illegality in the said action.

24. To give force to his argument, learned counsel for respondent no. 1 placed reliance upon the judgment of *Sushma Gupta vs. Indian Institute of Technology and Ors.*, 2015 SCC OnLine Utt 2027 and submitted that there is no illegality in the retirement of the petitioner at the age of 60 years, hence, the instant petition is liable to be dismissed for being devoid of merit.

25. The counter affidavit on behalf of the respondent no. 2 is on record and it has been submitted therein that the UGC vide its Notification dated 6th November 1998 modified the scheme already notified vide Notification of the Government 27th July 1998. The Clause 4 of the Notification deals with age of Superannuation which provided that the age of Superannuation of 62 years shall be applicable to Registrars, Librarians, Physical Education Personnel, Controllers of Examinations, Finance officers and such other University employees who are being treated at par with the teachers and whose age of Superannuation was 60 years. Subsequently, the Commission vide its Notification dated 24th December 1998 notified the UGC Notification of 1998. Clause 16.1.0 of the Notification provides that teachers will retire at the age of 62 years. However, it is open to a University or a College to re-employ a superannuated teacher according to the existing guidelines framed by the UGC up to the age of 65 years. The Clause 16.2.0 provides that the age of retirement of Registrars, Librarians, Physical Education personnel, Controllers of Examinations, Finance Officers and such other university employees who are being treated at par with the teachers and whose age of Superannuation was 60 years, would be 62 years. However, thereafter by the letter dated 26th June 1999 a clarification was received by the UGC which stipulated that the age of

superannuation may be extended after considering the factors. The said factors include, *first*, whether the level and method of recruitment including the qualifications prescribed are comparable to those of teachers or not, *second*, whether the function, nature of duty and responsibilities are comparable or not, *third*, whether similar pay scales which are available to the teachers have been given with the due approval of the Government or not, and *fourth*, whether the other terms and conditions of service, including age of superannuation, as applicable to the teachers have been given with the approval of Government or not.

26. It is submitted that in light of all the above communications, clarifications and notifications, the post of Archivist is a non-teaching post and the persons appointed on the post shall retire at the age of 60 years and neither any benefit of Career Advancement Scheme or fixation of pay of Rs. 14940/- shall be allowed in their favour.

27. Heard learned counsel for the parties and perused the record.

ANALYSIS AND FINDINGS

28. The controversy in the instant matter boils down to the question whether the Notifications of the respondent no. 2/UGC and appointment of the petitioner to the post of Archivist entitled him to the benefit of enhancement of the superannuation age from 60 years to 62 years as well as an enhancement of pay scale.

29. The petitioner before this Court has relied primarily upon the several duties assigned to him during his tenure to suggest that he was at par with

the teaching/academic staff and that the post of Archivist was equivalent to the post of Deputy Librarian. It is submitted on his behalf that he had been assigned duties including invigilating in examinations, conducting classes of the Bachelor of Library and Information Science Course, and serving as University Librarian.

30. The tasks of invigilation, taking supplementary classes and serving at a post on deputation are supplementary and complementary responsibilities attached to role of teachers and academic staff of educational institutions alongwith teaching, and cannot be said to be tasks in the nature of core academics and teaching that require specialised training and qualification. Successfully fulfilling the tasks assigned to him during his tenure cannot automatically entitle the petitioner to be considered at par with the teachers or placed him at equivalence with them. Admittedly, the petitioner was never appointed to the post of teacher at any point of his tenure with the respondent no.1. It is also not his case that he possessed the necessary qualification to be appointed with the teaching staff. Hence, this Court does not find force in the argument on behalf of the petitioner that merely completing tasks of the nature as aforesaid placed him at par with the teaching staff and teachers and entitled him to the enhanced pay scale or retirement age on this ground. For the reasons as stated, the petitioner also did not fall in the category of '*such other university employees who are being treated at par with the teachers*' mentioned under Clause 16.2.0 of the UGC Notification of 1998. The petitioner may have been an integral part of the library staff but was certainly not a Librarian as per the technical requirements of the University.

31. The petitioner also relied upon the communication by the Deemed University Jamia Hamdard and urged that the minimum qualification required for the post of University Librarian at the said University was 13 years of experience as Deputy Librarian and considering the role of the petitioner at the respondent no. 1, the petitioner was appointed on the post. However, a perusal of the letter dated 19th September 2003 shows that it explicitly says that in pursuance to the advertisement dated 12th September 2000, the petitioner was recommended to be appointed to the post of University Librarian on deputation terms with the said University. Therefore, there is no merit in this argument on behalf of the petitioner since evidently, neither the said post of University Librarian was with the respondent no. 1, or any institute operating under it, nor the said appointment was on a regularised post. Appointment of the petitioner with Jamia Hamdard University on deputation basis, upon having him found eligible for the post of University Librarian as per the eligibility criteria of the said private university, can in no manner bind the respondent no. 1 University to consider the post of the petitioner to be equivalent to the post of a Deputy Librarian as per its requirements.

32. Relying upon the said communication from Jamia Hamdard University and on the aforesaid tasks assigned to and completed by the petitioner, it is prayed on behalf of the petitioner that he may be placed at par with the Deputy Librarians and be granted identical benefits as them vis-à-vis superannuation age and other monetary benefits. However, it is pertinent to point out that each post has its own requirements *qua* eligibility, qualifications etc. and duties and responsibilities specific to the post and

only the person most suited to post is appointed to the same. It is an admitted case that the petitioner was never appointed at the post of Deputy Librarian, therefore, even if he possessed the qualification for being appointed at the post of Deputy Librarian it did not guarantee an appointment to the said post.

33. The counsels on behalf of the parties have brought to the notice of this Court the Office Order dated 19th February 2007. The said Order mentioned the dates of retirement against the names of the officials, wherein the date of superannuation of the petitioner was specified as 31st July 2007, i.e., upon attaining the age of 60 years. During his entire tenure and even in his representations, the petitioner did not challenge the Office Order dated 19th February 2007. The said Order has only been challenged before this Court in the instant petition. The Office Order remains to be in existence till date and was undisputedly in existence at the time of superannuation of the petitioner and accordingly, on 31st July 2007, the petitioner was superannuated. Considering the facts that the Office Order dated 19th February 2007 does not suffer from any gross illegality or has any error apparent on the face of record, that at the time of the superannuation of petitioner the Order was in operation without challenge, and that about fifteen years have passed after superannuation of the petitioner based on the said Office Order, I do not find any reason to set aside/quash the same.

34. During the course of arguments, the learned counsel for the respondent no. 1 handed over the Ordinance VI attached to the Notification dated 9th November 2017. The relevant portion of the Ordinance laying out terms and conditions of service of Jamia employees reads as follows:-

“13. Retirement

The age of retirement of the employees shall be 60 years or as notified by the University Grants Commission and endorsed by the Majlis-I-Muntazimah (Executive Council) from time to time

Provided that an employee may be retired earlier; on his being declared medically unfit for service by a Medical Board to be appointed by the Executive Council on this behalf; or on the imposition of the penalty of compulsory retirement.”

35. The said Ordinance passed in 2017 also remains unchallenged and unamended, therefore, has attained finality. With the said Ordinance still being in operation and having attained finality, it is evident that the direction as issued with regard to the retirement age of the employees, other than Teachers, Registrar, and Finance Officers, of Jamia Millia Islamia, i.e., respondent no. 1 University, being 60 years, will be applicable on the petitioner for the purposes of determining his claims against the respondent no. 1 University.

36. The petitioner is also aggrieved by the impugned order dated 15th October 2008 by virtue of which all his representations were rejected. The operative portion of the said order is reproduced hereunder:-

“Sir,

This has a reference to your request / representations received from time to time on the subject noted above and to inform you that the same have been considered in the light of the letter dt. 22/8/2008 received from the UGC and in consultation with the Legal Advisor of the University. It is regretted that the benefit of

enhanced age of superannuation as applicable to the case of Dy. Librarians cannot be extended to category of Archivist.'

37. It is also found, in the background of the firm and legal Office Order dated 19th February 2007 and letter dated 22nd August 2008, granting liberty to decide the fate of the issue of equivalence amongst the posts of Archivist and Deputy Librarian to the respondent no. 1 University itself, the respondent no. 1 passed the impugned order dated 15th October 2008.

CONCLUSION

38. Keeping in view the facts and circumstances, contentions raised in the pleadings, arguments advanced on behalf of the parties and the material available on record, it is found that the petitioner cannot be placed at par with the post of Deputy Librarians or be included in the category of employees being treated at par with the teachers for the purposes of fixation of his retirement age or his pay scale. He superannuated at the age of 60 years in accordance with the Office Order of the respondent no. 1 dated 19th February 2007 which was in operation without challenge at the time of his superannuation. He was never appointed to the post of Deputy Librarian or at a post at par with the teachers and there is no parity in the posts of a University Archivist and Deputy Librarian.

39. Therefore, this Court does not find any reason to interfere with the impugned orders and actions by the respondent no. 1/University.

40. Accordingly, the instant petition is dismissed for being devoid of merit.

41. Pending applications, if any, also stand disposed of.
42. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

OCTOBER 27, 2022
gs/ms