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

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Date of decision: 01.02.2022

+ **LPA 417/2018 & CM Nos. 30837/2018, 32707/2019, 39968/2019**

SHAILESH KUMAR SAXENAAppellant

Through: Mr Rohit Gandhi, Adv.

versus

JAMIA MILLIA ISLAMIA & ORSRespondents

Through: Mr Fuzail Ahmad Ayyubi, Advocate
JMI.

Mr Dev P Bhardwaj CGSC with Mr
Surender Kumar, Adv for R-3

Mr Apoorv Kurup & Ms. Nidhi
Mittal, Advs. for R-4/UGC.

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. We have heard the counsel for the parties for some time and perused the record.

2. A perusal of the record shows that the appellant had filed a writ petition i.e., W.P.(C) 9760/2016 [from which the present appeal arises], to assail the communication dated 13.05.2016 addressed by the Registrar, Jamia Millia Islamia (JMI) to the Officiating Director, State Resource Centre (SRC), JMI. The relevant part of the said communication is extracted hereafter:-

“.....



Sub: Recoverable amount of Rs.4.76 crore from Ministry of HRD

Sir,

I am to refer to this Office earlier letter dtd. 28.09.2015 on the subject mentioned above and to inform again that the heavy recoverable balance under the Scheme is continuously growing to meet the expenditure of SRC resultantly the closing recoverable balance amount at the end of the financial year 2015-16 has reached to the tune of Rs. 4.76 crore.

In view of the above, the Vice-Chancellor, JMI, while considering the suggestions made by Finance Officer has approved as under:

- 1. Salary of SRC staff be restricted to the amount received from Ministry of HRD. Any further payments from JMI is not advisable.*
- 2. No, further payment be made to the SRC from JMI, till money received from Ministry of HRD.*

In view of the above, you are once again advised to kindly take up the matter with the Ministry of HRD and request them to release the outstanding amount at the earliest in order to meet the different expenditure of SRC, inducting other benefits i.e. medical, retirement and other admissible allowances etc. so that functioning of Centre may not suffer....”

3. The learned single judge, via the impugned judgment dated 15.05.2018, disposed of a bunch of writ petition, including the aforesaid writ petition, with the following operative directions :-

“6. Upon hearing and on perusal of the impugned Communication, the two Guidelines referred to above the material on record and in particular, the 'order of 3rd April, 2018 in Nilofer Rizvi (supra), I find that non- availability of funds was also an issue in case of Nilofer Rizvi (supra) and in the said case, reference to Guidelines was made and upon



consideration of the Guidelines, this Court deemed it appropriate to issue a mandamus to Director, State Resource Centre in question to effectively consider the grievance of petitioner.

7. *In the facts and circumstances of this case, I find no reason to take a different view than the one taken by me in Nilofer Rizvi (supra). Consequently, these petitions and the pending applications are disposed of, with a mandamus to Director, State Resource Centre in question to pay the salary of petitioners out of the Development Fund in terms of the Guidelines for Management, Planning and Operation of the State Resource Centres (Annexure-C) issued by National Literacy Mission, Ministry of Human Resource Development, within a period of eight weeks from the date of receipt of this order and if the needful is not done, then petitioners be intimated within two weeks thereafter, as to what is the impediment in not releasing the arrears of salary and current salary to petitioners, so that petitioners may avail of the remedies available in law, if need be. It is so directed as the appointment letters of petitioners entitles them to arrears of salary as well as current salary till the Resource Centre in question is functioning.* Needless to say that the service conditions of petitioners shall be governed by the Ordinance XVIII (Annexure-G) issued by respondent-University.

8. *The Director of State Resource Centre in question be apprised of this order forthwith, to ensure its compliance.”*

[emphasis is ours]

4. Mr Rohit Gandhi, Advocate, who appears on behalf of the appellant, informs us that, although the learned single judge had said that salary should be paid at the current rate [then obtaining], JMI choose not to comply with the said direction.



4.1 It is also Mr Gandhi's submission that no order was passed, as indicated by the learned single judge as to, what was the "impediment" in not releasing the arrears of salary to the appellant.

4.2 For the purposes of completion of record, Mr Gandhi has drawn our attention to the order dated 03.08.2018, whereby JMI was directed to pay "undisputed salary" to the appellant.

4.3. Mr Gandhi concedes that the undisputed salary, albeit at the lower rate, has been paid to the appellant, during the pendency of the appeal. Mr Gandhi says that, pursuant to the order dated 03.08.2018, and during the pendency of the appeal, some amounts have been released, though calculations have not been furnished to the appellant.

5. In the present appeal, Mr Gandhi has sought to contend before us that the appellant was a regular employee of JMI, although attached to SRC.

5.1. A perusal of the prayer made in the writ petition and the impugned judgment dated 15.05.2018 would show that this was not an aspect, which was raised before the learned single judge. This was logical, as, even according to Mr Gandhi, SRC was closed down on 30.06.2018 i.e., after the judgement of the learned single judge.

5.2. Therefore, insofar as this aspect is concerned, we are of the view that a fresh cause of action, if at all, arose in favour of the appellant once the SRC was closed. It is only then that the appellant's status in JMI became doubtful.

5.3. We may indicate that JMI in its defence has stated that the appellant was not entitled to absorption although he was given the same rights and privileges as were given to employees of JMI. In this behalf, reliance has



been placed on Clause 9(4) of the Ordinance XVIII of JMI concerning Board of Management for Welfare Centres.

5.4. As indicated by us hereinabove, this is an aspect which the learned single judge did not dwell upon as the relief sought was confined to the communication dated 13.05.2016; a fact which evident from a bare perusal of prayer clause set forth in the writ petition.

6. We are informed by Mr Gandhi that JMI has not assailed the impugned judgement dated 15.05.2018, passed by the learned single judge.

6.1. On being queried, Mr Fuzail Ahmad Ayyubi, who appears for respondent nos.1 and 2, in effect, JMI, says that JMI has not served any order on the appellant, articulating, as to, why salary at the rate which was indicated in the letter of appointment has not been paid for the period in issue i.e., 13.05.2016 and 30.06.2018, when SRC was closed.

6.2. Given this position, Mr Ayyubi, states that the arrears of salary on account of difference in rates for the aforementioned period, in terms of the order of the learned single judge dated 15.05.2018, will be paid. In other words, the appellant will be paid salary at the rate at which he was getting the salary prior to the reduction being ordered, *via* communication dated 13.05.2016.

6.3. It is ordered accordingly.

6.4. Needless to add, JMI will comply with the aforesaid direction passed by us, within the next four weeks from today.

7. Insofar as the other aspect is concerned as to, whether or not the appellant was employed as a regular employee of JMI, according to us [and as contended by Mr Ayyubi], a fresh cause of action arose after SRC was closed on 30.06.2018.



7.1. Therefore, the appellant will be at liberty to take recourse to an appropriate remedy, albeit as per law, as far as this aspect is concerned.

7.2. Having regard to the fact that, even according to Mr Ayubbi, a fresh cause of action, arose, if at all, in favour of the appellant after closure of the SRC, in case the appellant were to take recourse to remedy as known in law to agitate his cause, as regards his status in JMI, the observations of the learned Single Judge in paragraph 7 of the impugned judgment dated 15.05.2018 will not come in his way.

8. The appeal is disposed of in the aforesaid terms. Consequently, pending applications shall also stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

FEBRUARY 1, 2022

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[Click here to check corrigendum, if any](#)