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

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Date of Decision: 24.04.2023

% **LPA 6/2023 and C.M. No. 789/2023**

KHALID KAMAL FARUQI Appellant

Through: Mr. Pratyush Sharma, Advocate.

versus

JAMIA MILLIA ISLAMIA & ANR. Respondents

Through: Mr. Pritish Sabharwal, Standing
Counsel with Mr. Sanjeet Kumar,
Advocate for Respondent No.1.

Mr. Apoorv Kurup, Ms. Swati
Bhardwaj and Ms. Kriti Dadhesh,
Advocates for Respondent No.2/
UGC.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.(ORAL)

1. The present Appeal has been filed by the Appellant/ Petitioner under Clause X of the Letters Patent having aggrieved by the Judgment dated 27.10.2022 passed by the Learned Single Judge in W.P.(C.) No. 8498/2008 titled *Khalid Kamal Faruqi Vs. Jamia Millia Islamia & Anr.*

2. The facts of the case reveal that the Appellant was working as an Archivist in Jamia Millia Islamia University¹ (the respondent no. 1). He has sought parity with teachers and employees who were treated as teachers in the University and claims that he is entitled to two more years in service, coupled with attendant benefits. His request was denied by the University and the Appellant was retired at the age of 60, contrary to his claim to serve till the age of 62. The Appellant gave a representation to the respondent University, which was rejected. He, then, approached this Court by way of a writ petition and the petition was also dismissed by the Ld. Single Judge. Against the order of dismissal, he has preferred the present appeal.

3. Before proceeding further, we may lay down a brief summary of the factual scenario. The appellant was appointed as an Assistant Librarian in the respondent University on 23.08.1967. In 1981, respondent no. 2 University Grants Commission² directed the University to establish an Archival Cells to be located in the central library of the University. The Commission directed that posts for the Archival Cell shall be sanctioned separately and shall be borne on the library cadre of the University. The appellant was appointed as an Archivist in the University Library vide order dated 10.04.1991 and was placed in the pay scale equivalent to that of the Deputy Librarian.

4. On 17.11.1984, the Commission conveyed its approval for the extension of Merit based Promotion Scheme to librarians, in addition to teachers, to universities wherein librarians/deputy librarians have been

¹ Hereinafter referred as “University”

² Hereinafter referred as “UGC” or “Commission”

declared as “teachers”. In furtherance of the notification titled “Minimum Qualification for Appointment of Teachers in University Colleges and for Measures for Maintenance of Standards, 1998”, the Ministry of Human Resource Development, vide its communication dated 27.07.1998, clarified that the age of superannuation of teachers shall be 62 years as against the existing age of 60 years. On 06.11.1998, a subsequent clarification was issued whereby the age of superannuation, as applicable to teachers, was made applicable to Registrars, Librarians, Physical Education Personnel, Controllers of Examinations, Finance Officers and “*such other University Employees who were being treated at par with the teachers and whose age of superannuation was 60 years*”. On 13.01.2000, the Commission communicated a letter to the University whereby it was clarified that the age of retirement of Librarians, Deputy Librarians and Assistant Librarians would be 62 years.

5. Thereafter, on 19.10.2006, by a letter of even date, the Commission communicated its approval for the extension of career advancement scheme to librarians. It stated that the Deputy Librarians, Assistant Librarians (Selection Grade) and College Librarian (Selection Grade) shall be eligible for placement at the minimum of Rs. 14,940/- as done in the case of Readers. Notably, the post held by the appellant was not mentioned in the said letter.

6. Aggrieved thereby, on 31.10.2006, the appellant gave a representation to the University seeking to be placed at the minimum of Rs.14,940/- along with the benefit of superannuation at the age of 62 years. The claim of the appellant was to be treated at par with the Deputy Librarians.

7. Thereafter, in response to a clarification, the Commission issued a letter dated 03.04.2007 to the University communicating that the age of superannuation of University Librarians, Deputy Librarians and Assistant Librarians shall be 62 years. In response to the representation of the appellant, the University sought a clarification from the Commission on the issue as to whether the enhanced age of superannuation would also be applicable to the post of University Archivist. As no response was received by the appellant, multiple representations were given to the University by the Appellant. The University wrote another letter to the Commission on 28.09.2007, making an enquiry as to whether the post of University Archivist would be eligible for the enhanced age of superannuation, career advancement scheme and for fixation of pay at the minimum of Rs. 14,940/

8. On 22.08.2008, the Commission responded to the enquiries made by the University and stated that it was for the University to decide, at its own level, regarding the applicability of the enhanced age of superannuation, career advancement scheme and modified fixation of pay to the post of Archivist. Thus, the decision was left to the University in this regard.

9. The respondent University rejected all the representations made by the appellant on 15.10.2008 and conveyed its decision that the enhanced age of 62 years would not be applicable to the post of Archivist. Thereafter, the appellant filed a writ petition before this Court which came to be dismissed vide order dated 27.10.2022 i.e. the impugned order.

10. Dismissing the writ petition, Ld. Single Judge observed that the appellant was never appointed as a teacher or as a librarian. He further noted that the appellant did not even possess the requisite qualifications for being

considered at par with the teachers. Addressing the appellant's argument that the appellant had taken some classes in the University, the Court noted that merely because the appellant was temporarily assigned with certain teaching responsibilities, the same would not entitle him to be treated as a teacher or to grant him service benefits at par with teachers. The relevant para reads thus:

*“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.**”*

(emphasis supplied)

It was urged before the learned Single Judge that the appellant was appointed as a University Librarian on deputation basis at the Deemed

University Jamia Hamdard University (a private university). It was submitted by the appellant that the said post required the applicant to be a Deputy Librarian for 13 years and since he was appointed as such, he ought to have been treated as a Deputy Librarian even by the respondent University. Rejecting this contention, Ld. Single Judge observed that appointment in a private university would not entitle the appellant to lay claim on a certain post in the parent University. The relevant para reads thus:

“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.”

The impugned order also notes that vide Office Order dated 19.02.2007, the date of superannuation of the appellant was notified as 31.07.2007 and the said order was never challenged by the appellant. Thus, it had attained finality. Since the appellant was superannuated in accordance with an office order which was not challenged, the same ought to be treated as valid and proper, specifically in light of the fact that the order has remained valid for over a period of 15 years. The relevant para in that regard reads thus:

“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.”

11. Ld. Single Judge has also adverted to Ordinance VI, attached to the Notification dated 09.11.2017, wherein the terms and conditions of service of the employees of the University has been laid down. The age of retirement is fixed at 60 years. Ld. Single observed that the said Ordinance of 2017 was never challenged by the appellant and thus, it had attained finality, meaning thereby that the age of superannuation of the employees, other than those being treated at par with the teachers, would be 60 years. The relevant part of the impugned order reads thus:

“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.”

12. In light of these observations, Ld. Single concluded that the appellant could not be treated as a Deputy Librarian or be placed at par with the teachers and dismissed the writ petition with the following finding:

“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.”

(emphasis supplied)

13. Taking exception to the order passed by Ld. Single Judge, the appellant submits that the impugned order dated 15.10.2008 is a non-speaking order and leads to an unreasonable classification by placing the post of Archivist in a separate category without any intelligible differentia. He further submits that the post of Archivist falls in the same pay scale as that of a Deputy Librarian and thus, he ought to have been treated at par with the said post. To buttress the submission, the appellant contends that he could not have been kept outside the classification of “such other university

employees who are being treated on par with the teachers” merely because he was never formally appointed as a Deputy Librarian. He further contends that his claim is not to be treated as a teacher, rather, it is to be treated at par with other posts which have been placed at equivalence with teachers within the language of clause 16 of the UGC Notification, 1998.

14. The learned Counsel for the Appellant further contends that five non-teaching posts are expressly mentioned in clause 16 of the Notification and the said posts have no connection with teaching activities and thus, he contends, the post of Archivist could not have been kept outside the purview of the said clause. To buttress this submission, the appellant has relied upon the rule of *noscitur a sociis* which mandates that general expressions in a provision must be interpreted in light of the categories expressly mentioned in the provision.

15. To advance his case, the appellant has also placed reliance upon the decisions of this Court in *S. Dildar Haider v. Jamia Milia Islamia & Ors.*³ and *Shafiqul Ain Usmani v. Jamia Milia Islamia & Ors.*⁴ whereby the posts of “Instructor in Leather Craft” and “Workshop Superintendent” respectively, were held to be falling in the category of “*such other university employees who are being treated on par with the teachers*” under clause 16.2.0 of the 1998 Notification.

16. The appellant further submits that he deserves to be placed at par with the other categories of employees on account of fulfilling the criteria of qualification, functionality, nature of duty, responsibilities, pay-scale and

³ MANU/DE/8920/2006

⁴ W.P.(C) No. 21367 of 2005

other conditions of service. He further submits that the Ld. Single Judge fell in error in not appreciating that the appellant was teaching a paper titled Library Cataloguing in B.Lib. & Information Science course in the university. Lastly, the appellant submits that the impugned order wrongly placed a reliance on the 2017 Ordinance for rejecting his claim as the said Ordinance was notified in 2017, whereas the appellant had retired in 2007 and thus, the Ordinance was not applicable to his case.

17. *Per contra*, the respondents have taken a stand consistent with the stand taken before the Single Judge. It is submitted that the post of Archivist was not identical to the post of Deputy Librarian and thus, the impugned order suffers from no infirmity.

18. We have gone through the impugned order and have carefully considered the documents on record and rival submissions. We may now proceed to examine the issue.

19. The short question that arises for our consideration is whether the post of Archivist would fall within the meaning of the expression “*such other university employees who are being treated on par with the teachers*” as used in Clause 16 of the UGC Notification on Revision of Pay Scales, Minimum Qualification for Appointments of Teachers in Universities, Colleges & Other Measures for the Maintenance of Standards, 1998⁵.

20. It is the admitted position that the post of Archivist has not been placed at par with the post of teacher or even with the post of Deputy Librarian by any notification of the Commission or any order of the

⁵ Hereinafter referred as “1998 Notification” or “Notification”

respondent University. The appellant's claim primarily rests on these deductions:

First, Ordinance XXIII of the respondent University placed the post of Archivist in the category of "Academic Staff" along with Librarian, Deputy Librarian and Assistant Librarian;

Second, the post of Archivist was sanctioned in the same pay scale as the Deputy Librarian;

Third, the post of Archivist is borne on the library cadre and forms integral part of the library staff;

Fourth, the clause 16 of the 1998 Notification includes various posts of non-teaching nature and there is no intelligible basis to distinguish the said posts from that of an Archivist.

21. Essentially, the basis of the appellant's claim stems from a methodology of deduction. Ordinance XXIII, in Para 1, categorically states that academic staff of the University would include "*such categories of staff, as are appointed to conduct research or to academically assist in teaching/research, or preparation of books and reading material, or in other allied activities of academic nature*". The Ordinance then, in Para 2, reads that "*In addition to the categories mentioned in Para 1 above, the following categories of the University employees shall also be the Academic Staff of the University*". The appellant contends that an Archivist falls in the category of academic staff and thus, he must be treated at par with teachers and other similar posts. Notably, the post of Archivist is placed in Para 2 of the Ordinance i.e. in the categories of posts which are not engaged in any kind of teaching, research, preparation of books or any allied activities of

academic nature. Even by a theory of deduction, there is no basis to say that an Archivist is engaged in any activity of academic nature. Even otherwise, the said notification only deals with the constitution of academic staff and has no bearing at all on the question of superannuation or other benefits.

22. We may also refer to the UGC notification dated 23.09.1981 whereby the post of Archivist was created. The said notification recorded the purpose for which the Archival Cells were created. It reads thus:

“The Cell should be available for processing historical records, manuscripts and the university records. The Commission’s support will be available for the following purpose:

- a) Staff (Archivist, Chemist and other supporting staff)*
- b) Library equipment, and*
- c) Chemicals”*

One may note that the nature of functions assigned to the Archival Cell is of processing historical records and does not, in any manner, pertain to any activity of academic nature.

23. We may now refer to the notification in question i.e. 1998 Notification. The first principles of legal interpretation dictate that in order to ascertain the true meaning and nature of the provisions forming part of a document, they must be read as one uniform whole and not in isolation. Clause 1.0.0 of the Notification deals with “Coverage” which delineates the applicability of the Notification. Clause 1.1.0 reads thus:

“1.0.0 COVERAGE

1.1.0 The scheme applies to University and College Teachers, Librarians, Directors of Physical Education and Registrars of Universities (excluding Agricultural Universities), and Colleges (excluding Agricultural, Medical, and Veterinary Science

Colleges) admitted to the privileges of the Universities unless they specifically exercise an option in writing to remain out of this space. However, the scheme will apply to the Teachers in the Faculty of Agriculture, Medicine and Veterinary Science in the Central Universities.”

The coverage clause of the Notification specifically delineates the categories which are covered by the Notification. The underlying intent behind the inclusion of these posts is to promote merit and excellence. We say so because a comprehensive reading of the Notification reveals that it does not only pertain to superannuation. Rather, it also lays down standards of recruitment, qualification criteria, selection process etc. for the posts mentioned in the Notification. It lays down principles for maintenance of minimum standards for the said posts.

24. We may now come to Clause 16 of the Notification which deals with “Superannuation and Re-Employment of Teachers”. Clause 16.2.0 reads thus:

“16.2.0 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. No re-employment facility is recommended for the Registrars, Librarians and Directors of Physical Education.”

(emphasis supplied)

25. The provision is applicable to the posts mentioned in the coverage clause and in addition, leaves it open to the University to categorize certain posts and treat them at par with the teachers. Treatment at par with teachers

would require entrustment of duties that are generally performed by the teachers. Such duties, in a logical sense, would involve the duties of academic nature. However, such treatment could also be afforded on the basis of the nature and importance of functions performed by certain posts, such as Registrar, Finance Officer, Librarian etc. An Archivist is entrusted with the task of processing the records of library. The Notification establishing the Archival Cell places an Archivist in the category of “Staff” along with Chemist and other supporting staff. There is neither an indication in the notification nor in the averments made by the appellant to take the view that an Archivist could be treated at par with the teachers or even with other categories of posts mentioned in clause 16.

26. The appellant contends that Clause 16 includes certain posts of purely non-teaching nature and thus, the post of Archivist could also be included. We are not impressed with this submission. As noted above, the nature of duties or commonality of pay scale is not the sole criteria for placing the said posts in a common category. Indeed, it is true that apart from teacher, some non-teaching posts are also treated at par with the teachers in Clause 16. However, the said treatment must be understood in a comprehensive sense. Apart from the nature of duties, the 1998 Notification also lays down certain standards for selection, promotion, performance and accountability. The posts which are treated at par with teachers are subjected to certain standards and the benefits attached to them, including enhanced age of superannuation, are merely the incidents of those standards. There is no parity in terms of the selection criteria, performance standards or accountability standards between an Archivist and other posts. No such

criterion is prescribed for the post of Archivist. A candidate applying for the post of Archivist is not required to meet the same standards as prescribed for other posts mentioned in Clause 16. Moreover, an Archivist is not required to meet the same standards of performance and promotions, as required for other posts. Therefore, the classification is intelligible. It would be wholly irrational to treat the post of Archivist as equivalent to other non-teaching posts. So far as the nature of duties is concerned, it may be noted that an Archivist is not performing the same functions as a Registrar or a Librarian or a Finance Officer. Although, on a broad view, all posts are non-teaching in nature, however, it would be irrational to assume that all non-teaching posts are of the same standard.

27. The 1998 Notification applies to certain specific posts only, as stated in Clause 1/ Coverage clause, and Clause 16 is only an incident of the coverage clause. The process of categorization of posts is essentially a policy decision of the University and the same has not been challenged on any reasonable ground. The Coverage clause is not even under challenge in this case. Even otherwise, the classification is primarily meant to place certain posts on a separate pedestal in view of the importance of functions performed by them and in view of the performance related standards prescribed for them. An Archivist is neither responsible for performing such integral functions, nor bound by similar performance related standards.

28. In order to cover himself in Clause 16, the appellant has relied upon the principle of *noscitur a socii*. The rule of *noscitur a socii* is essentially a rule of interpretation which is based on the principle that words assume their meaning from the company they keep. It is a principle which is used to

control the meaning of general words in light of specific words, which precede the general expressions. In this case, the appellant contends that the expression “*such other university employees who are being treated at par with the teachers*” would take its meaning from the preceding posts such as Registrar, Librarian, Finance Officer etc. In our view, the principle sought to be applied by the appellant is misconceived. The principle of *noscitur a sociis* is applicable to situations wherein the specific words mentioned in the provision constitute an identifiable uniform class. In this case, the posts mentioned in Clause 16.2.0 do not constitute a uniform class. They are different posts which are consciously placed together, as a policy decision, for the purpose of uniform application of law. There is no judicially determinable standard for using the said posts as indicative of what the aforesaid expression means. For the application of this principle, the specific words must carry an analogous meaning, unlike Clause 16 wherein the words used have no analogous meaning. In such circumstances, the general meaning cannot be controlled by the specific meaning, as required by this principle. If the appellant’s submission is to be considered, then all non-teaching posts in the University would have to be placed in Clause 16 and attendant benefits would have to be extended to all such posts. We say no more.

29. The appellant’s submission that an Archivist is appointed in the same pay scale as a Deputy Librarian and thus, he may be treated at par with a Deputy Librarian, would also fail to advance his case. Notably, the appellant was appointed as an Assistant Librarian. Later, he took regular appointment as an Archivist and consciously stepped out of the Librarian cadre once and

for all. The notification establishing Archival Cells categorically provides that the posts in Archival Cell would be regular in nature. Once a fresh regular appointment is accepted, no claim survives to be considered for any benefit available in the previous cadre. Merely because he was appointed in the same pay scale, it would not be a sufficient ground for treating him at par with a Deputy Librarian so far as terms and conditions of service are concerned.

30. As regards the circumstance of his appointment as University Librarian in a private university is concerned, we are in complete agreement with Ld. Single Judge that it was a deputation post which was offered by the said private university as per its own standards and norms. Such appointment would not impact the terms and conditions of service in the parent cadre.

31. The decisions relied upon by the appellant would also be unable to advance his case. It is so because the said decisions pertain to two specific posts which have nothing in common with the post of Archivist. In such circumstances, the decisions cannot be held to have laid down a rule of law for future application and must be understood in the specific facts of the case. The said decisions do not lay down any standard or guideline for treatment of certain posts at par with teachers. Even otherwise, no standard rule could be laid down for considering whether a post could be treated at par with the teachers. In our considered opinion, the issue is to be approached on a case-to-case basis, in light of the nature of duties, standards of appointment, promotions, performance and accountability prescribed for a post.

32. To conclude, we find ourselves in agreement with Ld. Single Judge. However, before parting, we may note that Ld. Single Judge fell in error in applying the 2017 Ordinance to the appellant's case and more so, in observing that the appellant ought to have challenged the said Ordinance in support of his case. The Ordinance was passed almost ten years after the retirement of the appellant. The appellant's retirement was not a consequence of the said Ordinance and thus, the appellant could not have been aggrieved by the said Ordinance in any manner. Therefore, the appellant could not have been burdened with the expectation of challenging the said Ordinance. The said Ordinance was passed after the action had taken place and had no bearing whatsoever on the case of the appellant.

33. In view of the aforesaid discussion, we hold the appeal to be meritless. We find no infirmity in the impugned order.

34. Accordingly, the appeal stands disposed of as dismissed.

35. Interim applications, if any, also stand disposed of in the aforesaid terms. No costs.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J.

APRIL 24, 2023/N.Khanna