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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 12th December, 2023

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W.P.(C) 10810/2022**DR. MUZAFFAR AZIM****..... Petitioner****Through: Mr. Arun Dhiman and Ms. Devika Agnihotri, Advocates****versus****THE UNION OF INDIA & ORS.****..... Respondents****Through: Mr. Rakesh Kumar, Central Government Standing Counsel with Mr. Sunil, Advocate for R-1.****Mr. Pritish Sabharwal, Standing Counsel, Jamia Millia Islamia with Ms. Pooja, Advocate for R-2.****Mr. Aishwarya Sinha and Mr. Aditya Malhotra, Advocates for R-3.****CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. This writ petition has been filed under Article 226 of the Constitution of India by the Petitioner seeking the following reliefs:-

“a. To quash impugned retirement notice elated 14.09.2021 issued by Respondent No.2 Jamia Millia Islamia and to consider the post of the petitioner as an Academic Post and consequentially enhance the date of retirement of the petitioner from 60 years to 65 years.

b. To grant Promotion to the petitioner under Career Advancement Scheme admissible for Academic Post first due in February, 2008 and consecutively, as not even a single promotion has been given to the Petitioner from the date of his joining on 11.02.2002 in the Respondent No. 2 University during his long service of more than 20 years.

c. To pay an Academic Grade Pay & Pay Scale along with other salary benefits to the Petitioner from 01.01.2006.

d. To compensate the petitioner for the illegalities committed by the Respondent No. 2 University in violation of the UGC guidelines and Ordinances of the University.”



2. Factual matrix to the extent necessary and relevant is that Petitioner was appointed as System Analyst in FTK-Centre for Information Technology ('CIT') in Respondent No. 2/Jamia Millia Islamia (Central University) (hereinafter referred to as 'Jamia'). Post of System Analyst (Group-A post) was advertised vide Advertisement No. 01/2000-2001 dated 15.09.2000. On being selected, Petitioner was offered the post vide Office Order dated 25.01.2002 and subsequently, his appointment was confirmed vide order dated 02.05.2003. The grievance of the Petitioner essentially relates to the impugned retirement notice dated 14.09.2021, whereby he was to retire on attaining the age of 60 years. On receipt of the notice, Petitioner submitted a representation on 27.10.2021 to the Registrar, Jamia stating that in view of Respondent No. 3/University Grants Commission's (UGC) letters issued in the years 1985, 1990 and 1996 as well as in view of Statute 22-A enacted in exercise of powers under Section 24 of Jamia Millia Islamia Act, 1988 (hereinafter referred to as the 'Jamia Act'), JMI Ordinances 19 (XIX), 21 (XXI) and 23 (XXIII) and the academic/teaching activities performed by the Petitioner during the span of his service, impugned notice be withdrawn and his age of superannuation be enhanced to 65 years. However, the representation was rejected on the ground that the initial appointment of the Petitioner was in the category of 'Non-Teaching Post' and thus the retirement order was valid. Being dissatisfied and aggrieved, Petitioner filed the present writ petition seeking the reliefs aforementioned.

CONTENTIONS ON BEHALF OF THE PETITIONER:-

3. In the Advertisement as well as the proceedings of the Selection Committee dated 22.11.2001 and the offer letter dated 25.01.2002, whereby the Petitioner was appointed, there is no mention that the post of



System Analyst is a Non-Teaching post, contrary to the stand of Jamia in the impugned order. With regard to promotion and rationalisation of pay scales of academic/technical/scientific staff in the Computer Centre, Instrumentation Centre etc., UGC vide its letter dated 14.02.1985 conveyed to the Vice Chancellors of all Central Universities that wherever the incumbents of these posts are considered as Teachers by the Universities, they may be considered for Merit Promotion Scheme and all these posts may be non-vacation/academic posts and holders of posts will be given all benefits such as holidays, study leave etc. Vide letter dated 10.01.1990, UGC formulated guidelines with respect to staff pattern and scale of pay in Computer Centres of Central Universities, whereby the pay scale of System Analyst was fixed in the Lecturer grade. By another letter dated June, 1996, UGC in reference to Jamia's letter dated 11.10.1985 sanctioned additional posts of System Analysts for Computer Centre in the scale of a Lecturer. All these letters were prior to the issue of the Advertisement under which the Petitioner was appointed and thus there is no doubt that the post of System Analyst was treated as Academic post, entitling the Petitioner to Lecturer's pay scale.

4. As per the terms and conditions of appointment letter dated 25.01.2002, services of the Petitioner were governed by Jamia Act, Statutes and Ordinances, as amended from time to time. Executive Council of Jamia in its meeting held on 22.03.2002 renamed the 'Computer Centre' as 'Centre for Information Technology' and the Centre is listed as one of the 20 Centres of the University under Statute 22-A. The Executive Council in its meeting held on 23.06.2009 passed a Resolution approving JMI Ordinance 19 (XIX) and amending Ordinance 21 (XXI). While the former deals with 'Common Ordinance for the Centres' and Clause 8 thereof deals



with Committee of Studies comprising of all academic staff of the Centre for imparting academic courses such as Ph.D./Post-graduation/Under-graduation/Diploma/Certificate or Planning to start such courses, the amended Ordinance 21 (XXI) stipulates that *'The staff of the Centre in the grade of Assistant Professor or of equivalent rank/grade or of higher grade shall be considered as Non-Vacation Academic staff'*. Apart from having its own Committee of Studies, Centre for Information Technology has its own Research Committee and Research Advisory Committee and has been declared as one of the academic centres in accordance with University Regulation IX for Ph.D. and M.Phil. and is actively involved in academic, research and teaching activities. Centre has been conducting Ph.D. courses in Information Technology for over 12 years, apart from regular classes and examinations. Centre has been actively involved in setting and moderation of Questions papers, evaluation for the Ph.D. (IT) coursework as well as for the Entrance Examination of the Ph.D. (IT). Four Research Scholars have been awarded Ph.D. in Information Technology degree till date under the guidance of the Academic staff working as Supervisor/Co-Supervisor and at present two Research scholars are enrolled in Ph.D. (IT) programme at the centre under the guidance of the Academic staff working as Supervisor/Co-Supervisor. More than 30 Academic research papers have been published in International Journals/Conferences by the Ph.D. Research Scholars at the Centre under the guidance of the Academic staff working as Supervisor/Co-Supervisor. Apart from research activities, other academic activities like conducting Workshops/Conferences/Training are being conducted at the Centre at regular intervals. Academic staff of the centre are also being called as External Examiner for various Academic courses being conducted at different departments of the University. The



academic staff have been invited as regular faculty to different Academic programmes being conducted at Academic staff College, JMI for the Professors. Associate Professors & Assistant Professors from various universities of the Country. All this goes to show that the Centre is an academic centre and job profile of those working therein is purely academic.

5. JMI Ordinance 23 (XXIII) defines 'academic staff' to mean and include such category 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. In Clause 3 it further provides '*Such other Categories of the University employees, as may be assigned as Academic Staff by the Majlis-i-Muntazimah (Executive Council) from time to time*'. Section 2(a) of Jamia Act also defines 'academic staff' as '*Academic staff means such categories of staff as are designated as academic staff by the Ordinances*'. It is thus clear that FTK-CIT is one of the academic centres of Jamia performing various research and development as well as teaching activities and the age of superannuation of the academic staff is admittedly 65 years. The academic profile of the Petitioner is amply substantiated by his work profile which included academic research, development and teaching in the Centre, in areas such as Neural Networks, Cloud Computing, Machine Learning etc.; role as academic member of the Committee of Studies of the Centre; supervising research scholars during Ph.D. in Information Technology in areas of research such as 'Machine Learning' and 'Cloud Computing'; conducting teaching classes for Ph.D., coursework, setting question papers for Ph.D. (IT) coursework and entrance examinations and working as regular faculty to different academic programmes etc.



6. Petitioner was supervising two research scholars registered at the Centre in the Ph.D. academic course and Ordinance 9 (IX) defines 'Supervisor' as '*A supervisor means a member of the academic staff of the Department/Centre/Faculty approved by BOS/COS on the recommendation of DRC/CRC to guide/supervise the research*'. Petitioner was working as Supervisor even after superannuation on 31.12.2022 in light of Addendum to Ordinance 9 (IX) issued by Jamia vide Office Order dated 13.07.2022 which states '*6(b) A retired teacher may continue to supervise the research scholar(s) assigned under his/her supervision after his/her retirement till the submission of the thesis or upto three years whichever is less or unless he/she declines to remain the supervisor or leaves Delhi*'. Further, Petitioner has been actively involved in research work and has published 5 Academic Research Papers in International journals including in the field of 'Mobile Robots' in 2004.

7. The Jamia Act was notified on 08.10.1988 and while Section 2(n) postulates that Teachers of the University would mean Professors, Readers and Lecturers, the definition includes 'such other persons' as may be appointed for imparting instruction or conducting research and designated as Teachers by Ordinances. Therefore, it is incorrect for Jamia to take a stand that the definition of Teachers is restricted to the three categories i.e. Professors, Readers and Lecturers. In fact, two Instructors, Ms. Rashida Majeed and Mr. Faiyaz Ahmad employed at Jamia retired at the superannuation age of 65 years.

8. The post of Senior System Analyst which is the next level of the post of System Analyst and is at par with Associate Professor was advertised on 18.11.2013 under the head 'Academic Post'. It is true that the advertisement was withdrawn by a Corrigendum dated 21.11.2013, but as



the Corrigendum reflects, the withdrawal was for review of qualifications and post was to be re-advertised soon, with the other contents of the advertisement remaining same. Even earlier thereto, the said post was advertised vide Advertisement No. 03/2003-2004 in the category of 'Academic' in the Reader scale. Even the posts of Network Engineer and Database Administrator were advertised as Academic Posts on 03.03.2004 in the Lecturer scale and these posts are at the same level as that of System Analyst. All these examples are sufficient to show that posts other than those of Professors, Readers and Lecturers have been treated as Academic Posts.

9. Case of the Petitioner is covered on all four corners by the judgment of the Karnataka High Court in ***Dr. S.R. Jayaram v. State of Karnataka & Anr., W.P.(C) No. 20039/2013, decided on 16.06.2014.*** Petitioners therein were working as Training Placement Officers/ Professors/Selection Grade Programmers/Lecturers/System Analysts/ Assistant Professors/ Programmers/Lecturers and prayed for extension of 6th CPC benefits by treating them at par with Professors, Associate Professors and Lecturers. Writ petitions were allowed directing the University to extend the benefit of the pay scale from the date of appointment of the Petitioners. In another petition before the Calcutta High Court, Petitioner challenged the letter of his superannuation at the age of 60 years, although he had been given the benefit of pay scale of academic staff under 6th CPC. Vide judgment in ***Dr. Narayan Ojha v. Union of India and Others, 2018 SCC OnLine Cal 10339***, the High Court directed the University to consider the post as academic post. Consequent to the directions, the matter was considered by the University and the UGC and age of superannuation of the Petitioner therein, was enhanced to 65 years.



CONTENTIONS ON BEHALF OF JAMIA:

10. Jamia is a Central University primarily governed by the Jamia Act and fully funded by UGC. All matters pertaining to Jamia including maintenance, expenditure, service conditions including age of superannuation etc. are strictly governed by UGC Guidelines in consonance with decisions taken by Department of Education, Ministry of Human Resource Development, Government of India. Present petition is not maintainable in view of the fact that the impugned retirement notice has been issued in terms of Clause 13 of Ordinance 6 (VI) which stipulates 60 years as age of retirement. Petitioner was appointed on probation against a non-academic/non-teaching post of System Analyst. The post of the Petitioner was considered by Jamia as a non-vacational academic post. Clause 4 of Ordinance 5(V) titled '*Leave Rules, 2021*' expounds interpretation of 'non-vacational officers' to mean all University employees other than 'Teachers' and 'semi-vacation officers'.

11. Reliance on UGC letter dated 14.02.1985 is misconceived as it only envisaged granting benefit of Merit Promotion Scheme to incumbents who were 'Teachers' and the status of non-vacational academic staff was accorded to the Petitioner only for the purpose of parity in pay scales between the academic and non-academic posts and even the benefit of Career Advancement Schemes was not granted to the non-vacational academic staff working in the FTK-CIT.

12. Petitioner's reliance on Ordinance 23 (XXIII) to bring his case under the definition of Academic Staff, is misconceived. Clause 1 of the said Ordinance expounds that the Academic Staff will mean and include those who are appointed to conduct research or academically assist in teaching/research or prepare books and reading material or are involved in



other allied activities of academic nature. As his job profile would indicate, Petitioner was neither involved in research nor rendered any academic assistance.

13. No advantage can accrue to the Petitioner on the basis of the Advertisement dated 18.11.2013, whereby post of Senior System Analyst was advertised under the head 'Academic Post' since the Advertisement was withdrawn by Corrigendum dated 21.11.2013, having been erroneously issued. In any event, Petitioner cannot stretch its case beyond the provisions of Ordinance 6 (VI), wherein superannuation age for a non-academic post is 60 years, based on an advertisement. This Court in ***Khalid Kamal Faruqi v. Jamia Millia Islamia & Anr., W.P. (C) No. 8498/2008, decided on 27.10.2022***, had rejected the contention of the Petitioner therein, who sought equivalence of his post of Archivist with Deputy Librarian in Jamia and sought enhancement of retirement age to 62 years as well as entitlement to the benefits under the Career Advancement Scheme. The Court held that Petitioner cannot be placed at par with the post of Deputy Librarian or included in the category of 'employees' being treated at par with Teachers for the purpose of retirement age or pay scale, as he was neither appointed to the post of Deputy Librarian nor to any post at par with Teachers. The judgment squarely applies to the present case. The judgment of the Karnataka High Court in ***Dr. S.R. Jayaram (supra)*** cannot help the Petitioner. Petitioners therein were seeking benefits of 6th CPC by treating their posts at par with Professors and Associate Professors under the AICTE Regulations. The concerned posts were considered at par prior to 2010 AICTE Regulations and were being extended the benefits of 6th CPC and the grievance of the Petitioners was that their posts were not reflected in the 2010 Regulations when 6th CPC was introduced. The



judgment in *Dr. Narayan Ojha (supra)*, is on a different factual aspect. Petitioner therein sought enhancement in superannuation age upto 65 years and was ultimately granted the benefit by the University in view of the observations of the Calcutta High Court that the Petitioner was appointed against an Academic Post and had achieved the Pay Band of an Associate Professor coupled with the applicable Statute in that case, which conferred a longer length of service to Associate Professors. In the present case, however, letter dated 14.02.1985 issued by UGC allows conferment of the status of Academic Staff only to seek parity for pay scales and at no stage services of the Petitioner were changed to that of an Academic Staff.

14. In *Swarn Bhanot v. University of Delhi and Others, 2019 SCC OnLine Del 7780*, this Court observed that burden of proving parity is on the person claiming parity and moreover, only because the duties and functions of two posts are similar, parity cannot be granted, as there are other factors which require consideration such as source and mode of recruitment etc. and there must exist wholesome identity between holders of two posts. In *Dr. Meera Sood v. University of Delhi and Others, 2021 SCC OnLine Del 4939*, this Court while deciding the question of treating the position of DPE and Librarian at par with Teachers, observed that merely because some benefits are provided to one class cannot be the reason to *ipso facto* grant the same benefits to another class. Reliance was also placed for this proposition on the judgments of this Court in *Jitendra Singh Naruka v. University of Delhi & Ors., 2016 SCC OnLine Del 5893* and *Krishan Gopal & Anr. v. Union of India & Ors., 2012 SCC OnLine Del 2930*. Even otherwise, mere equivalence of pay scales in two posts, is no reason to conclude that there is parity for all purposes. Illustratively, Finance Officer and Controller of Examination are two posts which have



pay scale equivalent to the post of Professor (Academic Post), but are considered as Administrative Posts. Petitioner has cited the case of Dr. Shane Kazim Naqvi, overlooking the fact that he was appointed as Additional Director in FTK-Centre w.e.f. 02.05.2013 on probation and his service record reflects non-conformant of any benefit under Career Advancement Scheme during his service as System Analyst. Service of the Petitioner, as rightly contended by him, was governed by the Jamia Act, Statutes and the Ordinances and once the Ordinance stipulates the age of retirement to a non-teaching/non-academic post as 60 years, no benefit can be given to the Petitioner contrary to the Rule position and there is no challenge to Clause 13 of Ordinance 6 (VI) in the present petition.

15. I have heard learned counsels for the parties and examined their contentions.

16. The issue that arises for consideration before this Court is whether the age of superannuation of the Petitioner should be 65 years or 60 years. As per Ordinance 6 (VI) which deals with '*Terms and Conditions of Service of Jamia Employees (other than Teachers, Registrar and Finance Officer)*', the age of retirement of employees is 60 years or as notified by the UGC and endorsed by Executive Council from time to time. The genesis of the present petition is a letter dated 23.03.2007 issued by MHRD, regarding enhancement in the age of superannuation from 62 to 65 years for teaching positions in centrally funded institutions in higher and technical education, whereby the age of superannuation of all persons who held teaching positions on regular employment against sanctioned posts as on 15.03.2007 in any of the centrally funded higher or technical education institutions under MHRD was increased from 62 to 65 years.



Predicating its case on this Notification, Petitioner seeks enhancement of superannuation age from 60 to 65 years.

17. Petitioner was appointed as System Analyst vide offer letter dated 25.01.2002, wherein it was stated that his services would be governed by Jamia Act, Statutes and Ordinances, amended from time to time. There is no dispute that Jamia is an autonomous central university with two categories of employees viz. academic/teaching staff and non-academic/non-teaching staff and within each category there are employees at different levels with different designations. The heart of the dispute between the parties to the *lis* is whether the post of System Analyst is an academic or non-academic post. Be it noted that Petitioner had approached this Court impugning the retirement order at the age of 60 years and therefore there is no speaking order passed by Jamia which would disclose the reasons that weighed with the University to reject the claim of the Petitioner. Counter affidavit has been filed to the writ petition but despite detailed averments by the Petitioner, predicated on Jamia Act, Ordinances and Statutes as well as reliance on a host of documents, there is only an evasive denial with hardly any reasoning to controvert the submissions made. Petitioner has placed on record a plethora of documents reflecting appointments held by him, work profile, timetables and schedules of actual classroom teaching etc. including Ordinances. Broadly understood, the stand of the Petitioner is that post of System Analyst is an academic post. In order to substantiate this stand, Petitioner has first and foremost urged that UGC in its letter dated 14.02.1985, which is prior to Petitioner's appointment, had accorded the status of 'Non-Vacation Academic Posts' to academic/technical/scientific staff posts in computer centres, instrumentation centres etc. Relevant paragraph of the letter is as follows:-



“ ...

The above decision of the commission is subject to the following :-

1. In the case of staff who fulfill the qualifications as prescribed by the UGC for those posts and have been selected through properly constituted selection committees, they may be placed in the rationalized scales of pay as indicated above.

2. In the case of staff who do not fulfill the qualifications as prescribed by the UGC, they may be given the rationalized scales of pay only the prescribed qualifications have been acquired by the incumbents and till such time they may be retain present scales of pay.

3. Wherever the incumbent of the above posts are considered as teachers by the universities. They may be considered for the Merit Promotion scheme for the corresponding faculty members.

4. All these posts may be non-vocation academic posts and their timing of work/holidays etc will be as those of the administrative posts in the Universities. They will also be given all other benefits like that of study leave, participation in conference, etc like those given to teachers.

.....”

18. Petitioner urges that in its meeting held on 22.03.2002, Executive Council of Jamia renamed the computer centre as ‘Centre for Information Technology’. Section 24 of the Jamia Act provides that the First Statutes are those set out in the Schedule. Statute 22-A in the Schedule enumerates 20 centres of the university and Centre for Information Technology is one of those 20 centres. Relevant it is to note that by a Notification dated 14.07.2009, the Executive Council in its meeting held on 23.06.2009, on the recommendation of the Academic Council vide its Resolution dated 01.06.2009, approved the Common and Individual Ordinances of various Centres of Jamia as enumerated therein, in terms of Section 25(1)(k) of Jamia Act. By Ordinance 21 (XXI), it was provided that there shall be a ‘FTK Centre for information technology’, subject to provisions of the Act, Statutes, Common Ordinance of Centres and in consonance with the aims and objects of the University. As per Ordinance 21 (XXI), placed on record by the Petitioner, the aims, objective and functions of the Centre include



offering Ph.D. programme in IT and allied disciplines, undertaking research and development projects in IT and other allied areas. The Ordinance also provides for constitution of a Board of Management and appointment of ‘Committee of Studies’ amongst other Committees. Relevant paragraphs are as follows:-

“1. Subject to the provisions of the Act, Statutes, Common Ordinance of Centres and in consonance with the aims and objects of the University, there shall be a “FTK-Centre for Information Technology”, hereinafter referred to as “The Centre”.

2. Aims, Objectives and Functions of the Centre

The functions of the Centre shall be as follows:

....

(xii) To develop and run short-term career-oriented/career-plus specialized courses, including online courses, in Information Technology and relevant areas;

(xiii) To offer Ph.D. programme in Information Technology and allied disciplines;

(xiv) To conduct training courses in Information Technology and relevant areas;

(xv) To undertake Research & Development projects in Information Technology and allied areas;

(xvi) To perform any other function incidental to the above functions as assigned to the Centre by the University from time to time.

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6. Committee of Studies:

The Committee of Studies of the Centre shall be as per the provisions laid down in the Common Ordinance of the Centres.”

19. Ordinance 19 (XIX) notified on 13.03.2012 provides for ‘Common Ordinance for the Centres’ and stipulates that subject to the provisions of the Act, Statue 22-A and other relevant statutes, functioning of the centres of the University shall be regulated by this Ordinance. Clause 8 of this Ordinance provides the constitution of the Committee of Studies, as follows:-



“8. Committee of Studies:

(a) Each Centre imparting courses of Ph.D./ Post-graduation/Under-graduation/ Diploma/Certificate or planning to start such courses, shall have a Committee of Studies, comprising of the following:

- i. Director of the Centre who shall be the Chairman;*
- ii. All the academic/ scientific staff of the Centre;*
- iii. Two person teaching allied or cognate subjects in the University to be nominated by the Board of Management;*
- iv. Two experts not in the service of the University to be co-opted by the Committee of Studies.*

(b) The appointment of members specified in items (iii) and (iv) above shall be for a period of three years. ”

20. The functions of the Committee of Studies are stipulated in Clause 8(c) and as evident are in the field of academics, such as recommending to the Board of Management course of studies; measures for improvement of standard of teaching and research; appointment of supervisors for research work to consider matters of general and academic interest of the centre etc. Relevant paragraph is as follows:-

“8. Committee of Studies:

...

(c) The Functions of the Committee of Studies shall be:

- i. To recommend to the Board of Management:*
 - Courses of studies and their Syllabi;*
 - Appointment of examiners for all courses; excluding Ph.D. course;*
 - Measures for improvement of standard of teaching and research;*
 - Subjects for research for various degrees and other requirements of research work;*
 - Appointment of supervisors for research work.*
- ii. To allocate teaching work among the staff;*
- iii. To consider matters of general and academic interest to the Centre and its functioning;*
- iv. To perform such other functions as may be assigned to it by the Board of Management.”*



21. Under Faculty of Natural Science, as per University Regulation (R-IX), Centre for Information Technology has been declared as one of the academic centres and is actively involved, according to the Petitioner, in academics, research and teaching activities and has been conducting Ph.D. courses in IT for over a decade. Petitioner has categorically stated that since 2009, 4 Ph.D. degrees have been awarded by the Centre with only the academic staff working as the Supervisors and more than 30 research papers have been published.

22. Petitioner further avers that since the date of his appointment, he is involved in various research and academic activities, some of which are mentioned in paragraph 14 of the petition and are as follows:-

“i. Actively involved in the Academic Research, Development & Teaching activities of the Centre in the latest area of research like Neural Networks, Cloud Computing, Machine learning etc.

ii. Performing the role and responsibility of an academic member of the Committee of studies of the Centre constituted in the light of the JMI Ordinance 19 and as such has been notified as Academic staff in all the notices of the Committee of studies of the centre for more than last 12 years.

iii. Convener of the Centre’s Research Committee and member of Research Advisory Committee.

iv. Supervising Research scholars admitted during Ph.D. in Information Technology being run at the Centre in the latest areas of research like “Machine Learning” and “Cloud Computing”.

v. Designing Syllabus for the Ph.D. (IT) programme at the Centre.

vi. Conducting Teaching Classes for the Ph.D (IT) Coursework and as such has been approved as a faculty for the Ph.D(IT) coursework by the Committee of Studies of the Centre.

vii. Setting, Moderation & Evaluation of Question Paper for the Ph.D (IT) Coursework, and as such has been approved as an Examiner for the Ph.D(IT)coursework by the Committee of Studies of the Centre,

viii. Setting the Question Paper for the Entrance Examination for the Ph.D (IT) as per vacancy.

ix. External Examiner for various Academic courses being conducted at different department of the university.



x. A regular faculty to different Academic programmes being conducted at the Academic staff College, JMI for the Professors, Associate Professors & Assistant Professors from various universities of the Country.

xi. Participation in Conferences/Workshop held at the Centre.”

23. Additionally, Petitioner was rendering services as regular faculty in different academic programmes, conducted at Academic Staff College, JMI for Professors etc. from various universities of the country. Petitioner states that five academic research papers authored by him have been published in International Journals, the first of them being ‘Mobile Robots’ in 2004. Petitioner further states that he has been a Supervisor to two research scholars for Ph.D. (IT) courses run at the Centre in the latest areas of research, ‘Machine Learning’ and ‘Cloud Computing’. Petitioner has been a member of the Committee of Studies constituted under Clause 8 of Ordinance 19 (XIX) in his capacity as an academic staff. Additionally, Petitioner was also the convenor of ‘Centre Research Committee’ and ‘Research Advisory Committee’ of the Centre. In support of each of these averments, Petitioner has filed substantial documentary material on record.

24. Petitioner laboured hard to flag and highlight his job profile as a pointer to the nature of his post being academic. Some of these documents for a ready reference are: Minutes of Meeting of the Centres Research Committee dated 17.09.2019 of which Petitioner was a convenor, where one of the agendas was to interview Ph.D. candidates with regard to their research proposal and Petitioner was also recommended as a Supervisor of the candidate selected for Ph.D. admission; Minutes of Meeting of the Research Advisory Committee dated 28.01.2021 to review the progress of research work of Ph.D. scholars at the Centre; Time-Table for classes held at the Centre for the Ph.D. programme 2019-20, whereby lectures were to



be delivered by the Petitioner on various subjects in actual classroom teaching. Similar time tables have been filed for earlier years and some documents also indicate that Petitioner was setting the question papers for Ph.D. courses apart from being an examiner and evaluator for the Ph.D. course examination 2019. Letter dated 11.02.2019 reflects that Petitioner was a Supervisor of a candidate admitted to Ph.D. programme in IT w.e.f. 11.02.2019 for research in 'Security Threats and Challenges in Wireless Sensor Networks (WSNs)'. Proof of bills towards remuneration for paper setting/examiner has also been placed on record.

25. In a nutshell, Petitioner claims that as per Ordinance 23 (XXIII), the academic staff of the University means and includes such category of staff as are appointed to conduct research or academically assist in teaching/research or in allied activities of academic nature. Relevant part of the Ordinance is extracted hereunder:-

"Ordinance 23 (XXIII)
ACADEMIC STAFF

1. The Academic Staff of the, University shall mean and 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."

26. According to the Petitioner, while it is enough to fulfil any one criterion mentioned in the Ordinance, he fulfils all criteria based on his work profile and is therefore a holder of an 'academic post'. Reliance was also placed on Ordinance 9 (IX), which defines 'Supervisor' to mean member of the academic staff of the department/centre/faculty approved by BOS/COS on the recommendation of DRC/CRC to guide/supervise the research. Section 2(a) of Jamia Act further provides that 'academic staff means such categories of staff as are designated as academic staff by the ordinances' and Ordinance 21 (XXI) states that staff of the centre in the



grade of Assistant Professor or equivalent or of higher grade shall be considered as Non-vacation academic staff.

27. Coming to the stand of Jamia, it is significant to note that while there is a general denial that the post of System Analyst is an academic/teaching post and reliance is placed on the appointment letter of the Petitioner, there is no specific denial or rebuttal to most of the averments premised on the Ordinances, as referred above and to the plethora of documents filed in support of the argument that Petitioner was holder of an academic post. Reference is made by the Petitioner to a host of documents in paragraph 14 of the petition, however, the reply in the counter affidavit merely states that the contents are denied and Petitioner as a System Analyst has a peremptory duty to adhere to all instructions made during the continuance of his services. At several places in the counter affidavit, significantly, there is an admission that the status of Non-Vacational Academic staff was accorded to the Petitioner in terms of letter dated 14.02.1985 issued by UGC. Having so admitted, the position is defended by clarifying that the conformant of the status was to grant parity between the pay scale of academic and non-academic staff. For ready reference, paragraph 6 of the counter affidavit is extracted hereunder:-

“6. That the status of the non-vocational academic staff was accorded to the petitioner by respondent no.2 in terms of the letter dated 14.02.1985 issued by respondent no.3. It is submitted that the impetus behind such conferment of status was to seek parity between the payscales of academic and non-academic posts. It is submitted that respondent no.2 in terms of the Pay Commissions introduced by respondent no.1 had accordingly given the emoluments and the benefits to the petitioner. It is further submitted that respondent no.2 had accorded the emoluments and benefits in congruence with the Pay Committee introduced by respondent no.1.”

28. Petitioner has in response stated that this plea is completely false, since the status of academic post was accorded in the year 1985 pursuant to



letter dated 14.02.1985 issued by UGC and this was during the currency of the 5th CPC when the pay scales of academic and equivalent non-academic posts were the same. Both sides have also placed reliance on several judgments in support of their arguments.

29. Having considered the documents on record and the pleadings, this Court is of the view that there is no clarity in the stand of Jamia much less a reasoning to deny enhancement of age of retirement to the Petitioner. Most of the averments in the petition are either not denied or there is an evasive denial. There is no response to the Ordinances/documents relied upon by the Petitioner and in fact there is an admission that the post of System Analyst was accorded the status of non-vacational academic post. To my mind, it would be imperative that the issues flagged and highlighted by the Petitioner are examined by Jamia in the first instance, in light of the Jamia Act/Ordinances/Statutes and the UGC letters etc., and a fresh decision is taken as to whether Petitioner's post falls under the definition of 'Academic Post'.

30. Therefore, in my view, it would be appropriate that the matter is remanded back to Jamia for a re-consideration of the entire matter holistically and in the background of the pleas taken by the Petitioner, the Act, Statutes and Ordinances, UGC letters, documents pertaining to his job profile including his appointment as Supervisor to Ph.D. students, the actual classroom teaching etc. The present petition along with the rejoinder and documents annexed thereto shall be treated as a representation and a decision shall be taken within eight weeks from today. Needless to state that after consideration, a reasoned and speaking order shall be passed by Jamia, which shall be communicated to the Petitioner within one week thereafter and Petitioner will be at liberty to take recourse to legal remedies



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in case of any surviving grievance. In case, the decision is taken in favour of the Petitioner, he will be entitled to retire at the age of 65 years with all consequential benefits including back wages. It is made clear that at this stage the Court has not expressed any opinion on the merits of the pleas of either side and the decision shall be taken uninfluenced by any observation made in this order and in accordance with law.

31. Writ petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

DECEMBER 12, 2023/shivam