

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

Judgment reserved on: 20.03.2023

% **Judgment delivered on: 11.04.2023**

+ **LPA 310/2021 & CM APPL. 29999/2021, 39150/2022, 45329/2022, 45458/2022, 45459/2022, 49744/2022, 55147/2022 & 8704/2023**

PROF SABIHA HUSSAIN

..... Appellant

versus

JAMIA MILIA ISLAMIA AND ORS

..... Respondents

+ **LPA 313/2021**

DR MEHER FATIMA HUSSAIN

..... Appellant

versus

JAMIA MILIA ISLAMIA & ORS.

..... Respondents

+ **LPA 316/2021**

DR SURAIYA TABASSUM

..... Appellant

versus

JAMIA MILLIA ISLAMIA UNIVERSITY

THROUGH THE VICE CHANCELLOR & ORS. Respondents

MEMO OF APPEARANCE:

Mr. Ajit Kumar Sinha, Senior Advocate with Mr. Srijan Sinha, Ms.Parul Dhurvey & Mr. Naveen Soni, Advocates for Appellant in LPA 310/2021.

Mr. Mohinder J.S. Rupal, Mr. Hardik Rupal & Mr. Madhav Mehrotra, Advocates for Appellant in LPA No.313/2021.

Mr. Barun Kumar Sinha, Ms. Pratibha Sinha & Mr. Mudit Kaul, Advocates for Appellant in LPA 316/2021.

Mr. Pritish Sabharwal, Standing Counsel with Ms. Shweta Singh & Mr. Sharad Pandey, Advocates for Respondent/ Jamia Milia Islamia.

Mr. Sushil Kumar Pandey, Advocate for Respondent No.4/ UOI in LPA 310/2021.

Mr. B.K. Singh, Advocate for Respondent No.5/ UGC in LPA 310/2021.

Mr. Apoorv Kurup, Ms. Nidhi Mittal & Ms. Swati Bhardwaj, Advocates for Respondents No.3 & 5/ UGC in LPA Nos. 313/2021 & 316/2021.

Mr. Farman Ali, Mr. Krishan Kumar & Ms. Usha Jamwal, Advocates for Respondent in LPA 313/2021.

Mr. Sudarshan Rajan, Mr. Hitain Bajaj & Mr. Rohit Bhardwaj, Advocates for Applicants in C.M. No.55147/2022.

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.

1. Regard being had to the controversy involved in the aforesaid LPA's, they were heard analogously and a common judgment is being passed. The learned Single Judge while delivering a common judgment in all connected Writ Petitions has dealt with the facts of W.P.(C.) No. 8532/2019, *Prof Sabiha Hussain v. Jamia Milia Islamia* and Ors and therefore, the facts of the case of Professor Sabiha Hussain are being dealt by this Court while

passing a common order in all the connected LPA's. The facts of LPA 310/2021 are being dealt as under:

2. The facts of the case reveal that the Appellant Writ Petitioner came up before this Court stating that she was initially appointed as a reader on probation on ad hoc basis by Respondent Jamia Milia Islamia for the study of Social Exclusion and Inclusive Policy in K.R. Narayanan Centre for Dalit and Minorities Studies. The post was advertised vide advertisement dated 01.05.2008 and the appointment of the Appellant was made through a proper selection committee. The Petitioner was later on redesignated from the post of Associate Professor to the post of Professor under the UGC Career Advancement Scheme (CAS) 2014 w.e.f. 06.08.2014. The Petitioner was thereafter posted as Professor Director vide order dated 22.03.2016.

3. The Petitioner has further stated that an advertisement was issued on 12.07.2016 inviting applications for the post of Professor/ Director as well as other posts in the Sarojini Naidu Centre for Women's Studies. The post of the Professor/ Director was a tenure post i.e. till the XIIth Plan of the UGC. The Petitioner pursuant to the aforesaid advertisement submitted an application on 09.08.2016 and an appointment letter was issued on 08.12.2016. The Appellant in the writ petition has further stated that appointment of the petitioner was approved in the meeting of the Executive Council on 10.03.2017.

4. The facts of the case further reveal that vide letter dated 27.04.2017, the University requested the UGC to merge the expenditure to be incurred on the salary of the faculty positions under the Development of Studies in

Indian Universities and Colleges – Continuation of Women Studies Centres in XIIth Plan into the Non-Plan (maintenance grant) of Jamia Milia Islamia.

5. Another request was made by the University on 31.07.2018 requesting the UGC to merge the posts of faculty in the Sarojini Naidu Centre for Women's Studies into the Non-Plan posts sanctioned by UGC.

6. The Petitioner in the writ petition further contended that vide letter dated 31.01.2019, the Petitioner informed the Respondent University that 3 years term of both internal and external members of Committee of Studies is going to expire in the month of February, 2019 and requested to approve two names each as internal as well as external members and in response to the aforesaid letter the University on 13.02.2019 informed about the approval/ renewal of both internal and external members of Committee of Studies. The Petitioner has further stated that the UGC vide its notice dated 26.03.2019 informed the public at large that the UGC Schemes will continue upto 31.03.2020.

7. The Petitioner in the writ petition has further stated that the UGC vide its letter dated 18.04.2019 granted approval to the merger of all the teaching positions of the Centre for Women's Studies (WSC) into the Regular Establishment Budget of the University and the Controller of Examinations vide letter dated 01.05.2019 informed that the Vice Chancellor has approved the Petitioner's absorption in the Centre for the School Admission Test 2019-2020.

8. The Petitioner along with other faculty members working in the Sarojini Naidu Centre for Women's Studies submitted a representation to

the Vice Chancellor of the Respondent University and requested to regularize and confirm the services of the Faculty Members appointed through Regular Selection Committees in Sarojini Naidu Centre for Women's Studies keeping in view the UGC's letter dated 18.04.2019. However, as nothing was done in the matter the Jamia Teachers Association vide its letter dated 07.06.2019 sought a clarification from the UGC as to whether the merger of the posts would mean that the services of the incumbents are confirmed or their services will be terminated and the posts will be advertised afresh.

9. The Petitioner has further stated that as the Respondent University did not take any steps towards the regularization of the services of the Petitioner and others, the petitioner made another representation before the Vice Chancellor, requesting her to regularize and confirm her service in the University.

10. The Petitioner has further stated that the UGC vide its letter dated 25.06.2019 addressed to the Respondents clarified that the persons appointed through proper selection procedure/ Committee and who are fulfilling all educational and other qualification as prescribed in the Regulations applicable at the relevant point of time, and whose appointments were approved by the statutory bodies, their services can be merged under Regular Establishment budget of Jamia Milia Islamia. The Petitioner in light of the UGC letter dated 25.06.2019 again submitted a representation for regularizing/ confirming her services.

11. The Petitioner has further stated in the writ petition that while the matter relating to regularization of the Petitioner and other teachers was pending with the authorities, disciplinary action was initiated against the Petitioner on frivolous grounds by issuing a show cause notice dated 28.06.2019.

12. It has been further stated that one professor Baran Farooqi was appointed as professor in charge of the Centre by an order dated 01.07.2019 and the Petitioner in those circumstances came up before this Court claiming regularization as well as sought quashment of show cause notice dated 28.06.2019.

13. Another important aspect of the case is that while the prayer for regularization was pending before this Court, an advertisement was also issued by the University dated 18.09.2020 inviting applications for the post of Director Professor/ Associate Professor/ Assistant Professor and the validity of the advertisement has also been looked into by the learned Single Judge, meaning thereby, the post on which the Petitioner was working was also the subject matter of controversy before the learned Single Judge.

14. In other connected matters also the validity of the advertisement is under challenge and it has been brought to the notice of this Court that the disciplinary proceedings which were initiated came to an end and relief was granted by the learned Single Judge by reinstating the Petitioner back to the position of Professor Director. In that backdrop the learned Single Judge has finally decided as to whether the Petitioner/ Appellant is entitled for a

relief of regularization or not and whether the advertisement dated 18.09.2020 deserves to be set aside or not.

15. A detailed and exhaustive reply was filed by the University in the matter and it was brought to the notice of the learned Single Judge that the UGC vide its letter dated 05.03.2012 approved the continuation of Women's Studies Centre established at the Jamia Milia Islamia University and as per the approved guidelines of Women's Studies Centre, only a professor was entitled to be appointed as a Director. It has been further stated in the reply that statute 22-A of Jamia Milia Act, 1988 provides for the functioning of the Centres and Ordinance 19(XIX) is the common Ordinance for the Centres established under Jamia Milia Islamia Act. It has been stated that as per the statutory provisions, a Centre is headed by a Director who shall be an academic staff of the University in the grade of Professor and the term of a Director shall be three years where there is a sanctioned post of Director in the Centre.

16. In the reply, it was further stated that a post of a Professor was vacant in the Centre for Women's Studies and the Petitioner was a Professor at the relevant point of time serving in Dr. K.R. Narayan Centre for Dalit & Minorities Studies. She was given additional charge and was appointed as Honorary Director, Sarojini Naidu Centre for Women Studies on 23.02.2016, purely on the basis of necessity and need of the hour.

17. The Respondents have further stated in the reply that an advertisement was issued on 12.07.2016 whereby a post of Professor/ Director was advertised, which was a plan based post or till the end of the scheme in the

WSC and it was categorically mentioned that it is a plan based post and it is being temporarily filled. Only three applications were received including that of the present Appellant. As per the procedure, a Screening Committee was constituted and the Screening Committee held a meeting on 28.10.2016 and the Committee recommended only two candidates to be interviewed for the post of Professor/ Director. The Petitioner was also one of the candidates. The Advertisement in question dated 12.07.2016 also included the post of Associate Professor. The interviews for the post of Professors and Associate Professors took place on 30.11.2016 and the Selection Committee was constituted comprising of 9 members including the Petitioner as she was the ad hoc Director of WSC, meaning thereby, the Petitioner was one of the members of the Selection Committee. The Petitioner being a member of the selection committee, on 30.11.2016, participated in the process of selection for the post of Associate Professor and for the post of Professor/ Director, the same selection committee on the same day selected the Petitioner and at the time of the Petitioner's interview 8 members were present in the selection committee as Petitioner himself was one of the members of the selection committee. The Respondents have stated that the process of selection was not comprehensive and as it was a tenure based post, only three persons submitted their applications and only two persons including the Petitioner were called for the interview.

18. The Respondents have further stated that out of only 2 candidates who were called for interview, the second candidate Alka Tyagi never appeared for the interview and the Petitioner was the sole candidate who appeared

before the selection committee on 30.11.2016 for the post of Professor in WSC.

19. The Respondents have further stated that the selection committee in its meeting held on 30.11.2016 selected the Appellant for the post of Director in WSC and in the appointment letter it was categorically mentioned “That the Appointment is tenure based and will remain valid till the XIIth Plan or till the scheme lasts which ever is earlier”

20. The Respondent University has further stated that vide letter dated 27.04.2017 and 31.07.2018, the University requested the UGC to merge the expenditure to be incurred on the salary of faculty position under “Development of Studies in Indian Universities and colleges – continuation of Women Studies Centre in XII Plan” into the Non-Plan (maintenance grant) of the Respondent University, meaning thereby, the said course was to be regularized and was no longer Plan based.

21. It has been further stated that in response to the University’s letter, the UGC, Respondent No.5 therein vide letter dated 18.04.2019 simply granted approval for merger of teaching positions of WSC into the regular establishment budget of the University, meaning thereby, the teaching positions in WSC were to come under the regular service of the University, and not under any financial plan or under a scheme, however, the faculty members were not to be regularized from the ad hoc posts that they were holding.

22. The Respondents have further stated that the adoption and validation of the merger letter of UGC was placed before the Executive Council of the

Respondent University in its meeting dated 02.05.2019 and it was resolved to merge the teaching positions of the WSC into the regular establishment of the University and to fill those posts through a properly constituted selection committee, by issuing an all India advertisement.

23. The UGC in continuation of its earlier letter dated 18.04.2019 wrote a letter on 25.06.2019 stating that the persons appointed through proper selection procedure and who are fulfilling all educational and other qualifications as prescribed in the regulations at the time and whose appointments were approved by the statutory bodies, their service may be merged under the regular establishment budgeted of the Appellant University.

24. The Respondents have further stated that the letter of the UGC dated 25.06.2019 was only directory in nature and it only stated that the University may consider the cases of incumbents teaching staff for regularization.

25. It has been further stated that a video surfaced on 26.06.2019 in respect of Sarojini Naidu Women Centre and in those circumstances, show cause notice was issued to the Appellant and the Appellant did file a writ petition i.e. the present writ petition and it was defended by the Respondents on the ground that at the stage of issuance of show cause notice, the High Court should not interfere in the matter keeping in view the judgment delivered by the Apex Court in *Union of India v. Kunisetty Satyanaryana* (AIR 2007 SC 906)

26. In respect of regularization as claimed by the Appellant, the Respondent University took a categorical stand that the Appellant was appointed temporarily, no proper selection took place, the Appellant herself

was a member of the selection committee and therefore, an appointment which was temporary in nature cannot be regularized as prayed for by the writ petitioner.

27. Rejoinder, counter rejoinder has been filed in the matter and the learned Single Judge, after minutely considering all the arguments canvassed by the parties has dismissed the writ petition of the petitioner as well as Writ Petitions preferred by other persons.

28. Paragraphs 61 to 88 of the common order passed by the learned Single Judge read as under:

“61. Having heard the learned counsels for the parties and perused the record, the only issue which arises for consideration is, whether the petitioners need to be granted regular appointment / absorbed on the posts in the Centre, pursuant to the approval granted by the UGC for their merger into the Regular Establishment of the University vide its letters dated April 18, 2019 and June 25, 2019.

62. It is a conceded case of the parties that, the UGC approved the establishment of the Centre under the IX Plan with the respondent / University. It also financed the working of the Centre. All the petitioners are working on the teaching posts in the Centre, with the petitioner in W.P.(C) 8532/2019 Professor Sabiha Hussain, appointed as Director / Professor in the Centre.

63. Pursuant to the approval granted by the UGC, as referred above, the respondent / University issued an advertisement on September 18, 2020 inviting the applications for one post of Professor, two Associate Professors and three Assistant Professors. The submissions of the learned counsels for the petitioners in support of their prayers are primarily the following:

(i) *Their initial appointment in the Centre was through the process of regular appointment and after the approval of the EC.*

(ii) *The UGC vide its letter dated April 18, 2019, granted approval for merger of teaching posts on which they are working, in the Regular Establishment of the University.*

(iii) *The UGC vide its letter clarified that the services of the persons appointed through proper selection procedure and who are fulfilling all educational and other qualifications and whose appointments were approved by statutory bodies be merged under Regular Establishment of the University.*

(iv) *The inaction of the University / respondent to absorb the petitioners is contrary to the doctrine of legitimate expectation.*

(v) *That the effect of the merger of the Centre into non-plan is that the incumbents have already been regularised and it is only the services, which need to be confirmed without following the fresh selection process.*

(vi) *The advertisement dated September 18, 2020, is illegal and undermines the number of years of service put in by the petitioners.*

(vii) *The University had regularised the services of the incumbents on conversion of UGC Centres from plan to non-plan even in the past.*

(viii) *Even in JNU similar posts in their Centre for Women Studies have been merged into non-plan in 2016 and incumbents therein have been absorbed.*

64. *Having noted the broad submissions made by the learned counsels for the petitioners at the outset, it may be stated, it is the conceded case of the petitioners, that their appointment in the Centre was for the period of UGC's XIIth Plan or till the end of the scheme. None of the petitioners have challenged the*

terms of their appointment. It is also a conceded case that their appointment was pursuant to an advertisement, on the posts which were ad-hoc and not regular. On being found successful they were appointed for the period as mentioned above. The nature of appointment being temporary and not permanent, not many persons, though fulfilling the eligibility would have applied for the same. The Supreme Court in the case of Official Liquidator v. Dayanand & Ors., 2008 (10) SCC 1, has in para 52 held, “xxxx the Official Liquidators appear to have issued advertisements for appointing the company-paid staff and made some sort of selection, more qualified and meritorious persons must have shunned from applying because they knew that the employment will be for a fixed term on fixed salary and their engagement will come to an end with the conclusion of liquidation proceedings. xxxx In this scenario, a direction for absorption of all the company-paid staff has to be treated as violative of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution.”

65. No doubt, the UGC has in the letters conveyed its approval to merge all the teaching positions in the Centre in the Regular Establishment of the University but the same does not convey that the incumbents shall also be absorbed on an as-is-where-is basis in the Regular Establishment of the University. Even, in the letter dated June 25, 2019, the UGC, has by stating “the incumbent teaching staff may be merged under the Regular Establishment budget of the Jamia Millia Islamia” has left it to the University to take a decision in that regard.

66. It is the case of the University that it, through EC has taken a decision on May 02, 2019, to fill the existing posts by way of proper selection after an advertisement calling applications on an All-India basis is issued. I find no illegality in the said decision of the University, in view of the authoritative pronouncement of the Supreme Court in Secretary, State of Karnataka v. Umadevi (supra) wherein the Supreme Court held that public employment has to be in terms of Constitutional Scheme being in conformity with provision of Articles 14 and 16 of the Constitution of India by giving wide publicity and

considering every person who fulfills the eligibility conditions and applies for the post. In paras 43 and 50 the Court held as under:

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an

employee had continued under cover of an order of the court, which we have described as “litigious employment” in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

xxx

xxx

xxx

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of

the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.”

67. Mr. Ayyubi is right in contending that regularisation / absorption is not a mode of appointment [Reference to: Nagar Mahapalika, Kanpur v. Vibha Shukla (SMT.) & Ors., 2007 (15) SCC 161]. The plea of Mr. Ayyubi, that the issuance of advertisement shall attract talent and regularising / absorbing the petitioners without considering all eligible persons through advertisement shall violate Article 14 is appealing. The judgements in the case of UPSC (supra), Kendriya Vidyalaya Sangathan (supra) relied upon by Mr. Ayyubi in support of his submission that all eligible persons must be called for / considered which will be in conformity with Article 14 of the Constitution of India is justified.

68. The counsels for the petitioners have contested the advertisement and are seeking their regular appointment by relying on the judgments of the Supreme Court and the High Courts. Insofar as the judgment in the case of Union of India and Ors. v. Hindustan Development Corporation and Ors. (supra) relied upon by Mr. Sinha in support of his submission that inaction of the respondent / University to regularise the appointment of the petitioners and similarly placed persons is contrary to the doctrine of legitimate expectation is concerned, the same is misplaced. This I say so because a person can have legitimate expectation only in consonance with law, not in

contravention of law. If the plea advanced by the counsels for the petitioners is to be accepted, then, the legitimate expectation of those persons who are also seeking employment in the University, shall be violated. The law being well settled in terms of the judgment in the case of Secretary, State of Karnataka v. Umadevi (supra), the judgment relied upon shall not be applicable to the facts of this case.

69. Regarding the reliance placed on the judgment in the case of Nihal Singh (supra), the Supreme Court was concerned with the recruitment made under Sections 17 & 18 of the Police Act, 1861 which enables the State to appoint Police Officers not below the rank of Inspector as Special Police Officers. These appointments have taken place during large scale disturbances in the State of Punjab in the 1980s. The persons who were appointed, approached the High Court for regularisation of their services. The writ petition was dismissed directing the consideration of the case of the petitioners / appellants in accordance with law by passing a speaking order. Their claim for regularisation was rejected, on the ground that they are working as Guards with various banks and their wages are being paid by banks and their claim for regularisation only lay with the bank and not with the Police Department. The Supreme Court while allowing the appeals held that the process of recruitment was consistent with Articles 14 and 16 of the Constitution of India as the process clearly indicated that it is not a case where the persons like the appellants were arbitrarily chosen to the exclusion of other eligible candidates. Such process of selection sanctioned by law under Section 17 of the Act was held to be not irrational. On such finding, the Supreme Court directed the State of Punjab to regularise the services of the appellants therein by creating posts within three months from that day. Suffice to state, the judgment has no applicability in the facts of this case, more so, in view of my finding above.

70. In so far as the Judgment in the case of State of Gujarat v. PWD Employees Union (supra) is concerned, the issue before the Supreme Court was related to a scheme contained in the

resolution dated October 17, 1988, which stipulated, all the daily wage workers who are working in the building maintenance and repairing work in different departments of the State such as Road and Building Department, Water Resources Department, Forest Department, etc. are entitled to regularisation or permanency in the service. The benefit of the resolution was not given to the daily wage workers working in Forest Department. A resolution in that regard was passed on December 22, 1999. The workers approached the High Court. Few rounds of litigation took place before the Court. Finally, an order was passed by the Single Judge, directing, quasi permanency be given to the workers, with counting of service notionally. The appeal therefrom before the Division Bench by State of Gujarat was dismissed. The Supreme Court held, they were engaged in jobs of perennial nature and the initial recruitment had not suffered from any illegality / irregularity. The Court held, the Judgments in the case of Umadevi (supra) and A. Umarani v. Registrar, Coop. Societies, (2004) 7 SCC 112 have no applicability as the said decisions shall be applicable where initial appointment was irregular / illegal. In the case in hand, the appointment of the petitioners having been made for the purpose of a limited period during the duration of the scheme / Plan and given that not all the eligible persons must have applied, and the Supreme Court in Umadevi (supra) has held that regular appointments have to be made in terms of the recruitment rules and by giving wide publicity, the judgment in State of Gujarat v. PWD Employees Union (supra) shall have no applicability.

71. In the case of Sheo Narain Nagar (supra), the Supreme Court was concerned with a case where the appellants were employed in the year 1993 and they had rendered service for three years when they were offered the service on contract basis. There were no rules in place for offering some kind of appointment. They were confirmed with the temporary status on October 2, 2002. In the year 1999, directions were issued to consider their case for regularisation. They were not granted regularisation / permanent appointment despite having completed 10 years of service. It is in that context, the Supreme

Court by referring to Para 53 of the Umadevi (supra) has held that since they have completed 10 years of service and temporary status has been given by the respondents with retrospective effect from October 2, 2002, they were to be regularised. The said Judgment is clearly distinguishable and has no applicability in the facts of this case.

72. Insofar as the Judgment in the case of P. Rajesh (supra) is concerned, the Supreme Court on a finding that the petitioners therein were not back-door entrants inasmuch as they had taken part in the recruitment process, which was lawfully initiated and they had not been appointed arbitrarily to the exclusion of other aspiring eligible candidates and the fact that the similarly placed contract engineers were regularised, the Court had granted directions for regularisation of the petitioners therein. This Judgment is distinguishable inasmuch as it is my finding above that the initial advertisement was for appointments limited to IXth plan or scheme and not permanent for which reason not many people would have applied for the same given the nature of appointment to be made; and it is the case of the respondents that they have issued an advertisement for ensuring applications from larger talent is considered while making regular appointment, no direction for regularisation can be given. Hence this Judgment is also distinguishable.

73. Reliance on the case of Malathi Das (supra) would not come to the aid of the petitioners as the Supreme Court was of the view that the case has to be dealt with in terms of Para 53 of Umadevi (supra). It is also a finding of fact that similarly placed employees were regularised by the State after the decision in Umadevi (supra) and the stand of the appellants in refusing regularisation to the respondents cannot be countenanced. As stated above, the case of the petitioners is not based on Para 53 of Umadevi (supra). Hence the Judgment is also distinguishable.

74. In Narendra Kumar Tiwari (supra), the appellants therein had sought the regularisation on the ground that they have put in ten years of service and therefore were entitled to be regularised. The High Court did not permit their regularisation

in view of Umadevi (supra), since they had not worked as on the date of cut-off, i.e., April 10, 2006 when the Constitution Bench rendered its decision. The Supreme Court was of the view that the appointment of the appellants was irregular and not illegal and that they had put in ten years of service. The regularisation rules which contemplate ten years of service as on April 10, 2006 of which a pragmatic interpretation needs to be taken and the fact that the appellants having completed ten years of service on the date of promulgation of the regularisation rules, the benefit thereof ought to be given. This judgment is also distinguishable in the facts of the case as it is not the case of the petitioners herein that they are entitled to the benefit of Para 53 of the Judgment in the case of Umadevi (supra) or there are regularisation rules in the University.

75. Though reliance has been placed on the Judgment in the case of Bhupendra Nath Hazarika and Anr. (supra), the same is not of any help to the petitioners. In the said Judgment, the Supreme Court has held that if the recruitment to service is regulated by the statutory rules, then the same has to be in accordance with those rules and if an appointment is made in breach of the rules, the same would be illegal.

76. It is the case of the respondent / University that regular appointment has to be made in accordance with the rules by giving a wide publicity and considering all those persons who apply on the basis of an All-India advertisement. Similarly, the judgment in Principal, Mehar Chand Polytechnic (supra) shall also not help the case of the petitioners as the ratio of the judgment is that any public employment has to be in accordance with Article 16 of the Constitution of India. I have already held that the issuance of advertisement by the University and the selections made thereof shall be in consonance with the provisions of the Constitution.

77. Having said that, one of the pleas of Mr. Ajit Kumar Sinha was that the teachers working in similar Centres have been absorbed in the Regular Establishment of the University. In fact, on such a submission I had on February 10, 2021 passed an order directing the University to file an affidavit as to what

practice was followed by the University in the past, while regularising a Centre into Non-Plan, whether the same resulted in the regularisation of the incumbents working in the Centre without resorting to a fresh selection process. Pursuant to the said order, an affidavit has been filed by the University wherein they have referred to six Centres established under the UGC scheme not yet merged into Non-plan Regular Establishment of Jamia Millia Islamia and as such none of the incumbents working in those Centres have been regularised.

78. Reply affidavits have been filed by the petitioners wherein the petitioner Professor Sabiha Hussain has, in para 9 referred to eight Centres which are all part of Statute 22(A) consisting of both categories, i.e., UGC Scheme Centres and Non-scheme Centres to contend that the respondent / University has an absolute past practice of regularising the incumbent teaching staff when a particular Centre, is merged into the Regular Establishment of the University. She has also given one instance of JNU, which was also under the UGC Women Studies Scheme similar to the Centre wherein the petitioners are working, to state, that the incumbent teaching staff has also been regularised. A reference is made to the correspondence exchanged between the JNU and the UGC in that regard.

79. A common rejoinder to the replies of the petitioners have been filed by the Jamia Millia Islamia to state that the stand of the petitioners that regularisation of Centre / Posts is unaffected, whether the Centre was created under the UGC Scheme or on its own accord. It is stated that the distinction between the plan / non plan and scheme / non scheme goes to the very heart of the matter and is the most crucial aspect to be settled. According to the University, the Centres enumerated under Statute 22(A) of the University Statutes are permanent Centres of the University and have always been made part of the Regular Establishment of the University subsequently. It is clarified that whenever any post within a Centre / Department / Faculty is proposed to be established by the University, it is after due approval of UGC with its nomenclature as "Post / Centre" under a particular plan during which it had been

created, however that does not mean that such Post / Centre is established in pursuance of UGC Scheme as in the case of a present batch of petitions. In other words, since the UGC five-year plan was envisioned for a period of five years and budget allocation was made at the beginning of that plan, naturally any post or permanent Centre that the University may create in the duration of such plan would be included as part of the Regular Establishment only in the next five-year plan. The University has given an example, inasmuch as if the University were to decide in the year 2014 that there is need for bringing of additional posts of Assistant Professor in a particular faculty in such circumstances, the XIIth plan having commenced in 2012, which did not account for these additional posts under the General Development Assistance and therefore from 2014 till 2017 funding on those additional posts would have to be given by the UGC under plan. However, when the XIIth Plan ends and the next begins, the said additional posts would automatically be treated as Non-plan and therefore, part of Regular Establishment of the University. Similar is the case with Centres of the University except those Centres which are established / created in pursuance of particular UGC Scheme / Project, since such Centres cannot be termed per se as the Centres of the University but rather, co-terminus with specific Scheme of the UGC in that regard. With regard to all the Centres named by the petitioners, the following is stated; (i) UGC and HRD Centre continues to run under a Scheme of UGC and is receiving specific grant-in-aid from the UGC; (ii) Academy of Professional Development of Urdu medium teachers though initially started under the scheme of the UGC such scheme having been discontinued by the UGC, the said University continues, the Academy for promotion of Urdu language however, the nature of appointment of incumbents therein continues to be purely temporary; (iii) Centre for Physiotherapy and Rehabilitation Sciences; Centre for Interdisciplinary Research in Basic Sciences; Centre for North-East Studies and Policy Research; Department of Tourism; Hotel; Hospitality and Heritage Studies; Faculty of Dentistry;

AJK Mass Communication Centre; Faculty of Architecture and Ekistics are not related to UGC Scheme.

80. From the above, it is noted that the University has tried to draw a distinction between the Centres financed by UGC for specific plan and those Centres which are not UGC Scheme based Centres, wherein the incumbents have been brought in the Regular Establishment of the University. Though, there is some justification for the University to draw distinction between the Centre with which the petitioners in this batch of petitions are concerned and the other Centres, this Court is of the view that the plea that all the Centres are alike irrespective whether the same is under UGC Scheme / Centre or Scheme / Centre started in the University in a plan and the petitioners need to be absorbed in the Regular Establishment on parity is not appealing for two reasons; firstly, the mandate of the Supreme Court in the case of Umadevi (supra) need to be adhered to, i.e., regularisation can only be in one eventuality where the appointment is irregular and the incumbents have completed 10 years of service and not otherwise. It is not the case of the petitioners that they have completed 10 years of service in the Centre. Further, the Supreme Court in Umadevi (supra) clearly held that regular appointment has to be in terms of the Constitutional scheme, that is in conformity with the provisions of Article 14, 15, 16 of the Constitution of India. The petitioners cannot be regularised overlooking the rights of others, who are equally eligible for applying to the posts in an Institution established under a Statute. I have already justified the decision of the University to issue an advertisement calling for applications in order to have a wider zone of consideration; to invite talent, which would be in conformity with the Constitutional Scheme. Secondly, there cannot be any negative equality, that is, the benefit given to the incumbents in other Centres cannot be given to petitioner when such a benefit is contrary to the judgment in Umadevi (supra). A common plea was taken by some of the counsels for the petitioners that as the posts on which the petitioners are working have been brought into the regular establishment of the University, their services are deemed to have been regularised in the University. The plea

is unmerited for the reasons; (i) there is no declaration by the University in that regard; (ii) in any case, it is the decision of the EC to call for applications on an All-India basis for making appointment to the posts in the Centre; (iii) the advertisement has already been issued by the University calling for applications, which advertisement I have already upheld in my finding above, as the same is in consonance with the law laid down by the Supreme Court in Umadevi (supra).

81. I am conscious of the fact that the petitioners have worked for five years in the Centre and have the working knowledge of research being carried out in the Centre. Such an expertise must be given due regard and it may also be a case where, with the passage of time, they may have become overage. The only way forward is, (i) the benefit of age relaxation be given; (ii) benefit of each completed year of engagement in the Centre is given in favour of the petitioners, at the time of selection, like awarding certain marks up to a ceiling limit so that they may have some advantage but not undue advantage over the outsiders. This I say so, in view of the judgment of the Supreme Court in University of Delhi and Ors. v. Delhi University Contract Employees Union and Ors., Civil Appeal Nos. 1007 and 1008 of 2021, decided on March 25, 2021 wherein the Supreme Court in paras 12 and 13 has stated as under:

“12. It is true that, as on the day when the judgment in Umadevi MANU/SC/1918/2006: (2006) 4 SCC 1 was delivered by this Court, the contract employees had put in just about 3 to 4 years of service. But, as of now, most of them have completed more than 10 years of service on contract basis. Though the benefit of regularization cannot be granted, a window of opportunity must be given to them to compete with the available talent through public advertisement. A separate and exclusive test meant only for the contract employees will not be an answer as that would confine the zone of consideration to contract employees themselves. The modality suggested by the University, on the other hand, will give them

adequate chance and benefit to appear in the ensuing selection.

13. We, therefore, direct that all the concerned contract employees engaged by the University be afforded benefits as detailed in paragraphs 6 and 7 of the affidavit dated 09.03.2021 with following modifications:

(a) The benefit of age relaxation as contemplated in paragraph 6 of the affidavit without any qualification must be extended to all the contract employees.

(b) In modification of paragraph 7 of the affidavit, those employees who were engaged in the year 2011 be given the benefit of 10 marks in the ensuing selection process while for every additional year that a contract employee had put in, benefit of one more mark subject to the ceiling of 8 additional marks be given. In other words, if a contract employee was engaged for the first time in the year 2010, he shall be entitled to the benefit of 11 marks, while one engaged since 2003 shall be given 18 marks, as against the appointee of 2011 who will have the advantage of only 10 marks. The contract appointees of 2012 and 2013 will have the advantage of 9 and 8 marks respectively.

(c) The Public Notice inviting applications from the candidates shall specifically state that the advantage in terms of the order passed by this Court would be conferred upon the contract employees so that other candidates are put to adequate notice.

(d) All the contract employees shall be entitled to offer their candidature for the ensuing selection in next four weeks and in order to give them sufficient time to prepare, the test shall be undertaken only

after three months of the receipt of applications from the candidates.”

82. *As the advertisement has already been issued and the applications have been received by the University, appropriate shall be that a corrigendum / public notice is issued by Jamia Millia Islamia specifically stating that the advantage in terms of this order, would be conferred upon petitioners / persons who have worked in the Centre so that the other candidates are put to adequate notice. If the petitioners have not applied against advertisement, they shall apply within four weeks from today.*

83. *The above shall not only result in a chance being given to the petitioners to participate in the selection process, but will also entitle them to have some advantage over the other participants. Till such time, the selection process is complete, the petitioners shall continue to work on the posts on which they are working in the Centre. Their further continuance shall be regulated by the final selection to be made by the respondent / University in terms of the advertisement issued on September 18, 2020.*

84. *Insofar as the challenge to the appointment of respondent No.3 in W.P.(C) 8532/2019 is concerned, the University shall pass an order on the continuance of the petitioner as Director taking into consideration the findings of the Inquiry Committee, and also the position under the statutes, including the tenure, and communicate the decision to the petitioner. If the respondent University is of the view that there is no impediment for continuance of the petitioner as Director / Professor, then the petitioner shall be allowed to continue on the post till such time, the selection procedure is held and appointments are made, as directed above. It is also made clear, if the decision of the University is that the petitioner should not continue as Director, then she shall be allowed to work on the post of Professor, till such time the appointments are made. In other words, in both the eventualities, the appointment of the petitioner as Director and / or Professor shall be regulated by the result of the selection that is to take place pursuant to advertisement dated September 18, 2020. Similarly, a prayer*

has been made by petitioner in the writ petition being W.P.(C) 10702/2020 for payment of benefits under 7 th CPC on merger of posts with the Regular Establishment. Suffice to state, the grant of benefits of the 7th CPC shall be only in the eventuality, i.e., if the petitioners are appointed pursuant to selection in terms of the advertisement dated September 18, 2020.

85. In view of my discussion above, it must be held the petitioners are not entitled to regularisation / absorption. The advertisement dated September 18, 2020 is valid and justified. The petitions are disposed of in terms of my conclusion above. No costs.

CONT.CAS(C) 602/2020

86. This contempt petition has been filed by the petitioner in W.P.(C) 8532/2019 alleging violation of order dated August 21, 2019 whereby the appointment of the respondent No.3 was stayed and the petitioner was allowed to continue on the post of Professor / Director till further orders.

87. It is the case of the petitioner that the advertisement dated September 18, 2020 inviting applications for the post of Professor amongst others is with a clear motive to remove the petitioner from her post of Professor / Director and as such is willful disobedience of the Court order. I am not in agreement with the stand of the petitioner in this petition, as the advertisement shall not constitute a violation of the order as passed on August 21, 2019. That apart, the petitioner is also continuing on the strength of the interim order.

88. The contempt petition is closed.

CM Nos. 44194/2019, 52378/2019, 5316/2020, 5317/2020 & 27998/2020 in W.P.(C) 8532/2019, CM No. 25800/2020 in W.P.(C) 7864/2020 CM No. 25930/2020 in W.P.(C) 7928/2020 CM No. 27309/2020 in 8454/2020

Dismissed as infructuous.”

29. Heard learned counsel for the parties at length and perused the record. The matter is being disposed of at admission stage itself with the consent of the parties.

30. The undisputed facts of the case reveal that the UGC vide letter dated 16.02.2000 approved the establishment of Women's Studies Centre under IX Plan in Jamia Milia Islamia which is a Central University, 100% funded by the Ministry of Human Resources, Government of India established by an Act of Parliament, the Jamia Milia Islamia Act, 1988.

31. The Women Studies Centre which was established under IXth Plan by the UGC continued through the Xth, XIth and XIIth Plan.

32. The undisputed facts of the case further reveal that a post of Reader was advertised vide advertisement dated 1.05.2008 and the Appellant was appointed by an order dated 06.08.2008 on the post of reader in the "Programme for the Study of Social Exclusion and Inclusive Policy" in K.R. Narayanan Centre for Dalit and Minorities Studies on a basic pay of Rs. 12,000/- per month in the pay scale of Rs.12,000-18300. Later on, the Appellant's post was converted from Reader to Associate Professor based upon UGC's Sixth Pay Commission recommendations and an order was issued on 15.12.2016 promoting the Appellant from the post of Associate Professor, Stage IV to the post of Professor under UGC Career Advancement Scheme, 2014 w.e.f 06.08.2014 and the Appellant was also made Professor/ Director vide order dated 22.03.2016.

33. The Respondent University issued an advertisement on 12.07.2016 inviting applications for the post of Professor/ Director in Sarojini Naidu

Centre for Women's Studies and the advertisement made it very clear that the post advertised was a tenure based post and was valid till the XIIth Plan Period or till the scheme under which the appointment was to be made.

34. The Appellant applied for the post in question and it is needless to mention that as it was a tenure based post, only three persons applied for the post of Professor/ Director. At the relevant point of time, the Appellant was already holding the post of Honorary Director in WSC.

35. The application of the Appellant along with two others was considered by the screening committee as well as applications in respect of other posts were also considered by the screening committee i.e. for the post of Associate Professor and interviews took place on 30.11.2016. A common selection committee comprising of nine persons, including the Appellant as she was the ad hoc director of WSC was constituted and the nine member committee conducted interviews for the post of Associate Professors, meaning thereby, the Appellant along with other members of selection committee conducted the interview of the candidates for the post of Associate Professor and on the same day the same committee as the Appellant was also a member of the committee conducted interviews for the post of Director/ Professor. The Committee which took interview of the Appellant was therefore of 8 members minus the Appellant. It is pertinent to note that interview call letters were issued only to two candidates and it was only the Appellant who appeared in the process of selection. Meaning thereby, the Appellant who was part of the nine member selection committee appeared before same committee. Even though the Appellant was the Ninth member as she was the sole candidate who appeared on

30.11.2016, she was selected by the selection committee for the post of Professor/ Director.

36. Finally, an order was issued on 08.12.2016 informing the Appellant that she has been selected as a Professor/ Director and the appointment order dated 08.12.2016 is reproduced as under:

“Office of the Registrar

08th December 2016

Selection/ RPS/RO/JMI/2016

Dr. Sabiha Hussain

Centre for Social Exclusion & Inclusive Policy

Noam Chamsky Complex

Jamia Milia Islamia

New Delhi – 110025

Dear Madam,

With reference to your application dated 09.08.2016 for the post of Professor / Director (Tenure post till XIIth Plan period or till scheme lasts) in the Sarojini Naidu Centre for Women's Studies, I am glad to inform you that on the recommendations of the Selection Committee held on 30.11.2016, the Vice-Chancellor, J.M.I., in anticipation of the approval of Executive Council, has approved your appointment on the post of Professor / Director (Tenure post till XIIth Plan period or till scheme lasts) in the Sarojini Naidu Centre for Women's Studies, MMAJ-Academy of International Studies, Jamia Millia Islamia on a basic pay to be fixed by the Accounts Office, J.M.I in the scale / PB of Rs. 37,400 - 67,000 with AGP of Rs. 10,000/- plus usual allowances at the rates admissible under the rules of Jamia employees of your category on the following terms and conditions:-

- 1. The appointment is tenure based and will remain valid till XIIth Plan period or till scheme lasts or till further orders, whichever is earlier. This will confer no title on you to continue on a long term basis.*
- 2. The Executive Council, however, reserve the rights of terminating your services forthwith or before the expiration of the stipulated period of notice by making payment to you of a sum equivalent to the pay and allowance for the period of notice or the unexpired portion thereof.*
- 3. Your services will be governed by the Jamia's Act, Statutes & Ordinances as amended from time to time.*
- 4. Your conditions of service shall be those embodied in the Agreement of Service, as prescribed by the Jamia and you shall have to sign the agreement before you enter upon your duties or as soon as possible thereafter.*
- 5. The appointment will be terminated at any time by one month's notice given by either side without assigning any reason.*
- 6. The Shaikhul Jamia (Vice-Chancellor) may when deems it necessary suspend you on the ground of misconduct.*
- 7. You will have to submit a discharge certificate from your present employer, if any.*
- 8. You will not cause damage to the property of the Jamia and will have to strictly observe the Code of Conduct. (Copy attached)*
- 9. The place of your duty will be Sarojini Naidu Centre for Women's Studies, Jamia Millia Islamia at present, however, you may be required to serve in any Department/ Institution of Jamia.*
- 10. If any declaration given or information furnished by you is proved to be false or it is found that you have suppressed any material information, you will be liable*

to removal from service and such further action as Jamia may deem necessary.

11. You are also required to submit your H.R.A claim in the prescribed proforma, available in the Accounts Office, at the time of joining duty in case you want to claim the House Rent Allowance as per Jamia rules.

12. You will be governed by the "New Pension Scheme" of Govt. of India, Ministry of Finance of Economics vide O.M. No. 1(7) (2)/2003/TA/ 11 dated the 7th January, 2004 read with O.M. No. 1 (7) (2)/2003/TA/67-74, dated the 4th February, 2004. Moreover, there is a provision in the said scheme for employees already in service to opt for old Pension Rule or new Pension Scheme.

13. If you accept the appointment on the above terms and conditions you are requested to intimate your acceptance to the undersigned through proper channel immediately and report yourself for duty within 15 days from the date of issue of this letter. If no reply is received or if you fail to, report for duty, after completing the formalities mentioned above, by the prescribed date, the offer will be deemed as cancelled.

14. No traveling or any other allowance will be paid for joining the post

Yours sincerely

(Dr. Abdul Malik)

Offg. Registrar"

(Emphasis supplied)

37. The aforesaid order makes it very clear that the Appellant was appointed against a tenure post against XIIth Plan or till the Scheme lasts

and it was categorically mentioned that order of appointment will not confer any title to continue on a long term basis.

38. The appointment of the Appellant was placed before Executive Council of the University on 10.03.2017 and the Executive Council approved the Appellant's appointment which was a tenure based appointment under XIIth Plan. It is true that the University vide letter dated 27.04.2017 and 31.07.2018 requested the UGC to merge the post of faculty in the Sarojini Naidu Centre for Women Studies into the non-plan post sanctioned by the UGC and the UGC vide its notice dated 26.03.2019 informed the public at large that the scheme will continue up to 31.03.2020. The letter of the UGC dated 26.03.2019 is reproduced as under:

“PUBLIC NOTICE

Subject: Continuance of the UGC schemes beyond 31.03.2019

In continuation to the Public Notice No. F. 1-8/2016 (JS/F/PPP-II) dated 18th October, 2017, it is informed that the existing UGC schemes will continue beyond 31.03.2019 and up to 31.03.2020”

39. The UGC vide letter dated 18.04.2019 granted approval for merger of all teaching positions of the Centre for Women's Studies into regular establishment of the University budget. The letter dated 18.04.2019 is reproduced as under:

“UNIVERSITY GRANTS COMMISSION

35, FEROZE SHAH ROAD

NEW DELHI- 110001

No. f.7-65/2012 (WS)

April, 2019

The Registrar,

Jamia Millia Islamia

Maulana Mohammed Ali Jauhar Marg,

New Delhi -110025

Subject: Merger of Teaching posts sanctioned by UGC under Centre for Women's Studies into regular establishment of the University budget.

Sir,

With reference to you letter No. Ref. No. PDB/S-202 Vol. III/2018/DRNO.56 dated 31.07.2018 on the subject mentioned above, the undersigned is directed to convey the approval of UGC to merge the all teaching positions into regular establishment of the University which were sanctioned by UGC under Centre for Women's Studies.

With regard to merger of non-teaching posts sanctioned under Centre for Women's Studies into regular establishment of the University, the same will be reviewed by the UGC separately. However, till the final decision on merger of non-teaching positions is taken by UGC, the continuation of these positions will be regulated under the specific scheme of Centre for Women's Studies.

Yours faithfully,

(Dr. Archana Thakur)

Joint Secretary"

40. The Appellant in light of the decision communicated by the UGC requested the Vice Chancellor to regularize services on the post of

Professor/ Director. She submitted a representation dated 10.05.2019 and the Jamia Milia Teachers' Association vide letter dated 07.06.2019 also submitted a representation and sought a clarification from the UGC in the matter of regularization of the teachers appointed in the Centre and the UGC finally by a letter dated 25.06.2019 informed the Respondent University that the persons appointed through proper selection procedure/ committees and who are fulfilling all the educational qualifications may be regularized. The letter dated 25.06.2019 of the UGC is reproduced as under:

"The Registrar

25th June, 2019

Jamia Milia Islamia

Maulana Mohammed Ali Jauhar Marg

New Delhi – 110025

Sub: Merger of teaching posts sanctioned by UGC under Centre for Women's Studies into regular establishment budget of the University – regarding

Sir,

This is in continuation to this office letter number F.7-65/2012 (WS) dated 18th April 2019 (copy enclosed), on the subject mentoned above, it is clarified that the persons appointed through proper selection procedure/ Committeee and who are fulfilling all educational and other qualifications as prescribed in UGC Regulations at that time and whose appointments were approved by the statutory bodies, the incumbent teaching staff may be merged under regular establishment budget of the Jamia Milia Islamia.

Yours faithfully,

(Kulvinder Kaur)

Under Secretary”

41. The aforesaid letter has nowhere directed the Jamia Milia Islamia to regularize the appointments which were against tenure posts, however, discretion was certainly granted to the University to consider the issue of regularization and the letter was directory in nature.

42. It is pertinent to note that the University thereafter issued an advertisement on 18.09.2020 inviting applications for the various teaching posts in the Centre, including the post of Professor/ Director and large number of writ petitions were preferred before this Court challenging the advertisement. The details of the Writ Petitions are reproduced as under:

W.P.(C) No. 8532/2019

Prof. Sabiha Hussain v. Jamia Milia Islamia and Ors.

Professor Sabiha Hussain in response to an advertisement dated 12.07.2016 applied to the post of Professor/ Director in the Sarojini Naidu Centre for Women's Studies and was appointed by an order dated 08.12.2016. In the appointment order, it was categorically mentioned that she is being appointed on a Tenure Post till XIIth Plan or till the scheme lasts. The appointment order of the Petitioner was approved by Executive Council of the Respondent dated 10.03.2017. The Petitioner, as per her contention, started claiming regularization on the strength of UGC letter dated 18.04.2019 stating that the UGC has granted approval to the merger of all teaching positions of the Centre for Women Studies into the Regular Establishment of the University. The Petitioner, thereafter submitted a representation on 10.05.2019 requesting the University to regularize the

Petitioner on the post of Director/ Professor and, as nothing was being done, another representation was submitted on 14.06.2019. The Respondent University, thereafter appointed one Professor Baran Farooqui as Professor in charge of the Centre, replacing the Petitioner and, in those circumstances, a writ petition was preferred, praying for the following reliefs:

“In light of the submissions made hereinabove the Petitioner humbly pray that this Hon’ble Court may be pleased to:-

a. Issue a writ of Mandamus or any other appropriate writ, order or direction directing the Respondent to regularise the Services of the Petitioner at the post of Professor/ Director and grant all consequential benefits in favour of the Petitioner;

b. Issue a writ of Mandamus or any other appropriate writ order or direction to quash / set aside the letter/order dated 01.07.2019 appointing Respondent No. 3 as Professor in Charge in place of Petitioner;

c. Pass any other and such further order(s) in favor of the Petitioner as this Hon’ble Court may deem fit to pass in the interest of justice.”

The learned Single Judge has dismissed the Writ Petition vide a detailed judgment.

W.P.(C.) No. 7928/2020

Dr. Mehar Fatima Hussain v. Jamia Milia Islamia Through its Vice Chancellor & Ors.

The Petitioner in the aforesaid Writ Petition was working as an Associate Professor in the Services of Jamia Milia Islamia since 2016. The Petitioner was appointed on 05.12.2016 and the Petitioner also submitted an

application for regularization, however, while her application was pending for regularization, an advertisement dated 18.09.2020 inviting applications for various posts in Sarojini Naidu Centre for Women's Centre. The Petitioner, in those circumstances, preferred a Writ Petition before this Court, praying for the following reliefs:

“a) Allow the present Writ Petition and grant Writ of Mandamus or any other Writ against the Respondent No. 1 and quash the Advertisement dated 18.09.2020 being Annexure P-1hereto.

b) Direct the Respondent no. 1 to confirm the service of the petitioner on post of Associate Professor in SNCWS, JMI with effect from the Petitioner's date of joining i.e. 08.12.2016 (Forenoon)with all consequential benefits including extending the benefits of 7 CPC and release of arrears.

c) Quash/set aside the Show cause notice dated 28.06.2019 and consequent decisions/ orders of the Respondent No. 1 and the consequent disciplinary proceedings initiated against the Petitioner.

d) Direct the Respondent No. 1 to maintain status quo em the employment status of the Petitioner during the pendancy of the Writ Petitiol1.

e) Stay the operation of the advertisement dated 18.09.2020 issued by the Respondent no. 1 till the pendancy of the present Writ Petition.

f) Pass such other and further orders as this Hon'ble Court may deem fit, just and proper in the present circumstances of the case in favour.”

The Petitioner, in short, claimed regularization on the post of Associate Professor in the services of Sarojini Naidu Centre for Women's Centre

w.e.f. 08.12.2016 with all consequential benefits. The Writ Petition has been dismissed by the learned Single Judge.

W.P.(C.) No. 8454/2020

Dr. Nabila Sadiq v. Jamia Milia Islamia & Ors.

The Petitioner was working as an ad hoc faculty in Daulat Ram College, University of Delhi. The Petitioner was selected as an Assistant Professor (tenure post till XIIth Plan period or till Project lasts) in the Sarojini Naidu Centre for Women's Studies. The Petitioner was continuing in service. She submitted representation for regularization, however, an advertisement was issued inviting applications for various teaching posts and being aggrieved by the same, the Petitioner preferred a Writ Petition, praying for the following reliefs:

“A. Issue an appropriate writ, direction or order quashing/setting aside the Rolling Advertisement No. 01/2020-21 dated September 18, 2020 issued by the Respondent University calling for fresh applications for the teaching posts at Sarojini Naidu Centre for Women's Studies, Jamia Millia Islamia on its merger with the Jamia Millia Islamia University;

B. Issue an appropriate writ, direction or order quashing/setting aside the Resolution dated May 2, 2019 passed by the Executive Council of the respondent University whereby existing posts at the Sarojini Naidu Centre for Women's Studies were again sought to be filled through proper Selection Committee after advertisement;

C. Issue an appropriate writ, direction or order directing the Respondent University to merge the services of the Petitioner under the regular establishment budget of

Jamia Millia Islamia and grant all consequential benefits; and

D. Pass any other and such further order (s) in favor of the Petitioner as this Hon'ble Court may deem fit to pass in the interests of justice."

W.P.(C) No. 7864/2020

Dr. Suraiya Tabassum v. Jamia Milia Islamia University Through the Vice Chancellor & Ors.

The Petitioner before this Court in response to an advertisement dated 12.07.2016 which was for various posts, applied for the post of Assistant Professor and she was appointed as Assistant Professor against a Tenure Post till XIIth Plan or till the scheme lasts. The Petitioner also submitted an application for regularization, however, the University issued an advertisement on 18.09.2020 inviting applications for the post of Professor/ Associate Professor and Assistant Professor in Jamia Milia Islamia and, in those circumstances, the Petitioner has preferred a writ petition, praying for the following reliefs:

“(i) To issue Writ of certiorari quashing the impugned Rolling Advertisement No. 1/2020-21 dated 18.09.2020 issued by the Respondent No.1 & No.2 for the post of Assistant Professor in Sarojini Naidu Centre for Women's Studies in Jamia Millia Islamia University.

(ii) To pass Writ of Mandamus commanding the Respondents to confirm the service of the Petitioner as Assistant Professor in the Sarojini Naidu Centre for Women's Studies in respondent No.1 University pursuant to merger of the post of Assistant Professor and other Teaching staff of Sarojini Naidu Centre for Women's Studies Centre into regular establishment of Jamia Millia Islamia with all consequent benefits.

(iii) Or pass such other or further orders as this Hon'ble court may deem fit & proper in the facts and circumstances of the case. ”

W.P.(C) No. 10702/2020

Dr. Firdous Azmat Siddiqui v. Jamia Millia Islamia & Ors.

The Petitioner before this Court was appointed as Lecturer at the Sarojini Naidu Centre for Women's Studies on 05.12.2006. She was appointed as Assistant Professor at the Centre on 07.12.2016. The Sarojini Naidu Centre for Women's Studies was merged with Jamia Millia Islamia vide a letter issued by UGC on 18.04.2019. The Petitioner submitted a representation for her regularization on 10.05.2019, however an advertisement was issued on 18.09.2020 inviting fresh applications for all teaching posts at Sarojini Naidu Centre for Women's Studies and in those circumstances, a Writ Petition was preferred, praying for the following reliefs:

“A. Issue a writ in the nature of Mandamus directing Respondent No. 1, JMI to conform to the guidelines and directions passed by Respondent No. 02, UGC for merging planned and non-planned posts for the faculty members at SNCWS;

B. Issue a writ in the nature of Mandamus directing Respondent No.1, JMI to appoint the Petitioner as Director, SNCWS which she rightfully deserves since December, 2019;

C. Issue a writ of Mandamus or any other appropriate writ order directing the Respondent University to merge the services of the Petitioner under the regular establishment budget of Jamia Millia Islamia and grant all consequential benefits including those of the Seventh Central Pay Commission of the Government of India, the benefits of which are applicable to the Petitioner;

AND

D. Pass any other and such further order (s) in favor of the Petitioner as this Hon'ble Court may deem fit to pass in the interest of justice."

43. The learned Single Judge, after hearing all the parties has passed a consolidated order in all cases after arriving at a conclusion that the only issue which arises for consideration is whether the Appellants/ Petitioners therein needs to be granted regular appointment/ absorption on the post in the Centre pursuant to the approval granted by the UGC for their merger into regular establishment of the University vide letter of the UGC dated 18.04.2019 and 25.06.2019.

44. The undisputed facts make it very clear that the appointment of the Appellant and other persons took place in the Centre for the period of UGC's XIIth Plan or till the end of the scheme and they were appointed in terms of the advertisement issued in the year 2016 which categorically stated that the appointment is a tenure based appointment.

45. The most important aspect of the case is that as the appointment was a tenure based appointment, very few people applied for the post advertised and in case of Professor Sabiha Hussain for the post of Director/ Professor only three applications were received out of which one application was rejected and in respect of remaining two applications only one candidate i.e. Sabiha Hussain appeared for the interview.

46. The most astonishing aspect of the case is that Professor Sabiha Hussain was holding the post of Honorary Director in the Centre and she

was one of the 9 member selection committee constituted for the purpose of appointments. The 9 member committee, including Professor Sabiha Hussain interviewed all other candidates for all other posts barring the post of Professor/ Director and in respect of interview for the post of Professor/ Director, she recused herself and appeared as a candidate before the remaining 8 Members who were already part of the 9 member Selection Committee, meaning thereby, only 1 candidate appeared for interview i.e. Professor Sabiha Hussain for the post of Professor/ Director.

47. When the matter was being argued before this Court, it was informed by learned Counsel for the University, Mr. Sabharwal that pursuant to the advertisement that has been issued, now, in the year 2019, as many as 200 applications have been received for the post in question and the selection has already been done. However, on account of an interim order passed by this Court, no appointment order has been issued.

48. This Court is of the considered opinion that the appointment of Professor Sabiha Hussain was certainly a tenure based appointment and the fact that only three candidates applied and one was interviewed fortifies the contention of the Respondent University that it was a tenure based post and large number of candidates did not applied for the post in question. In respect of other posts also, limited candidates applied pursuant to the advertisement.

49. The learned Single Judge has taken into account the judgment delivered in the case of *Official Liquidator v. Dayanand & Ors.*, 2008 (10) SCC 1. Paragraph 52 of the aforesaid judgment reads as under:

“xxxx the Official Liquidators appear to have issued advertisements for appointing the company-paid staff and made some sort of selection, more qualified and meritorious persons must have shunned from applying because they knew that the employment will be for a fixed term on fixed salary and their engagement will come to an end with the conclusion of liquidation proceedings. xxxx In this scenario, a direction for absorption of all the company-paid staff has to be treated as violative of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution.”

50. The aforesaid judgment makes it very clear that limited candidates in almost similar situation applied for the post in question as it was for a fixed term on fixed salary and the Hon'ble Supreme Court has held that a direction for absorption of such employees has to be treated as violative of doctrine of equality enshrined in Articles 14 and 16 of the Constitution.

51. The documents on record also establishes that the Executive Council has taken a decision on 02.05.2019 to fill up the existing posts by conducting a proper selection and by issuing an All India Advertisement and the learned Single Judge has rightly arrived at a conclusion that the decision of the Executive Council does not suffer from any illegality. He has taken into account the judgment delivered in the case of ***Secretary, State of Karnataka and Ors. v. Umadevi (3) & Ors.***, (2006) 4 SCC 1. Paragraphs 43 and 50 of the aforesaid judgment read as under:

““43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the

scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as “litigious employment” in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of

its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

xxx

xxx

xxx

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.”

52. The Honourable Supreme Court in the aforesaid case has deprecated the practice regularization of back door entrants and has held that public employment has to be in terms of Constitutional Scheme being in

conformity with provision of Articles 14 and 16 of the Constitution of India by giving wide publicity and considering every person who fulfills the eligibility conditions and applies for the post.

53. In the considered opinion of this Court, any direction to the Jamia Milia Islamia to regularize the appointment of the appellant and other identically placed persons shall certainly be contrary to the directions given by the Supreme Court in the case of *Secretary, State of Karnataka v. Umadevi* (supra) .

54. The learned Single Judge has also placed reliance on the case of *Nagar Mahapalika, Kanpur v. Vibha Shukla (SMT.) & Ors.*, 2007 (15) SCC 161]. In the considered opinion of this Court, issuance of advertisement shall attract talent and regularising / absorbing the appellants/petitioners without considering all eligible persons through advertisement shall violate Article 14 of the Constitution of India.

55. A similar view has been taken by the Honourable Supreme Court in the case of *UPSC v. Girish Jayanti Lal Vaghela & Ors.* (2006) 2 SCC 482, *Kendriya Vidyalaya Sangathan & Ors. v. L.V. Subramanyeswara & Anr.*, 2007 5 SCC 326.

56. Learned senior counsel for the Appellant, Mr.Sinha has placed heavy reliance upon a judgment delivered by the Hon'ble Supreme Court in the case of *Union of India & Ors. v. Hindustan Development Corporation & Ors.*, (1993) 3 SCC 499 and it has been vehemently argued that the Appellants were appointed through a regular process of selection and they were having a legitimate expectation in respect of regularization.

57. In the considered opinion of this Court, the Appellants were appointed against tenure post though there was a process of selection, however, very limited candidates applied for the post in question and it was made known to all the participants in the advertisement as well as in their appointment order that their appointment is a tenure based appointment and it will not create any right in their favour and, therefore, the judgment relied upon does not help the Appellants/ Petitioners.

58. Reliance has also been placed upon a judgment delivered by the Hon'ble Supreme Court in the case of *Nihal Singh and Ors. v. State of Punjab and Ors.* (2013) 14 SCC 65 and the judgment is distinguishable on facts. In the present case, the appointment of the Appellants/ Petitioners was certainly not in consonance with Article 16 and 16 of the Constitution of India as it was through a process which invited limited number of candidates being tenure appointment and the factum of tenure appointment was reflected in the appointment order itself.

59. The constitution of the selection committee has already been dealt with by this Court and the Appellants who are the back door entrants are taking shelter of the UGC letter dated 25.06.2019 claiming regularization in service.

60. Reliance has also been placed upon a judgment delivered in the case of *State of Gujarat and Ors. v. PWD Employees Union and Ors.* (2013) 12 SCC 417. It was a case of daily wagers doing job of perennial in nature and the learned Single Judge has distinguished the aforesaid judgment by holding that the Appellant's were appointed for a limited period during the

duration of the scheme / Plan and in those circumstances, all other eligible persons did not apply for the post and shockingly, for the post of Director/ Professor which is the topmost post, only three applications were received and only one candidate i.e. Professor Sabiha Hussain was interviewed and got selected. In those circumstances, the learned Single Judge has rightly held that the Petitioner/ Appellant is not entitled for the relief of regularization.

61. Learned Senior Counsel has also placed reliance upon the judgment delivered in the case of *Sheo Narain Nagar and Ors. v. State Of Uttar Pradesh and Anr.* (2018) 13 SCC 432. It was again a case of daily wagers who were confirmed with temporary status and who were not granted regularization. The present case is not a case of daily wagers. It is certainly distinguishable on facts and the manner and method in which appointments have been made speaks volumes about the process of selection and the judgment delivered in the case of *Sheo Narain Nagar* (supra) does not help the Appellant at all.

62. Reliance has also been placed upon a judgment delivered in the case of *P. Rajesh & Ors. v. Karnataka Power Transmission Corporation Ltd. and Ors.* 2016 (2) AKR 41. However, it is again distinguishable on facts as in the aforesaid case, some similarly placed contract engineers were regularized. In the present case as rightly held by the learned Single Judge, the appointments were limited to XIIth Plan or till the scheme lasts. They were not permanent appointments and very few selected individuals applied for the post in question and they cannot be granted benefit of regularization as prayed for.

63. Reliance has also been placed upon a judgment delivered in the case of *Malathi Das and Ors. V. Suresh and Ors.* (2014) 13 SCC 249. Again in the aforesaid case, similarly placed employees were regularized by the State and certain employees were denied the benefit of regularization and in those circumstances, the judgment was delivered, hence the learned Single Judge has rightly held that the judgment is distinguishable on facts.

64. Heavy reliance has been placed upon *Narendra Kumar Tiwari & Ors. V. The State of Jharkhand & Ors.* AIR 2018 SC 3589 and the same is again distinguishable on facts. It was a case where the regularization rules provided 10 years of service as on 10.04.2006 and the employees were not given the benefit of regularization as they were not working on as on the cut-off date i.e. 10.04.2006 and in those circumstances, the hon'ble Supreme Court has directed their regularization. In the present case, there are no such regularization rules governing the field in Jamia Milia Islamia. The Appellants/ Petitioners were appointed against tenure posts. There was no proper selection, meaning thereby, limited number of people applied for the post as the post were tenure based and, therefore, the learned Single Judge was justified in dismissing the writ petition.

65. It is an admitted case that the posts in Sarojini Naidu Centre for Women's Studies were tenure based till the currency of the UGC scheme and, therefore, the advertisement failed to attract larger pool of talent. The counter affidavit of the University dated 18.09.2019 in Paragraphs 7.5, 7.6 and 7.7 reads as under:

7.5 That the Answering Respondents published an advertisement bearing ADVT. No. 01/2016-17 dated 12.07.16 whereby a post of professor/ Director (PLAN based or till the ending of the Scheme) in the WSC was advertised. That the said post was an adhoc post and not a regular post. This fact was clearly mentioned in the Advertisement itself. The response to the said advertisement was dismal, and only three applications were received including that of the present petitioner. As per the procedure, a Screening Committee was constituted and held a meeting on 28.10.2016. The committee recommended only two candidates for the post of Professor/ Director and called those two for interview. It is submitted that one of the candidates was the present Petitioner. It is necessary to point out that at the time of Advertisement the Petitioner was already holding the post of Hony. Director in WSC. The copy of the proceedings of the screening Committee is marked and annexed as Annexure R-4. It is submitted that vide the advertisement dated 12.7.2016 the post of Associate Professor (two posts) was also advertised.

7.6 That after the process of screening, interview calls were also sent to other eligible candidates for other post that is Associate Professors and that of Professor in Sarojini Naidu Centre for Women Studies. Interviews for both the posts were held on same day i.e. 30.11.2016. The Selection Committee was constituted comprising of 9 members including the

Petitioner she being the adhoc Director of WSC, thereby the Petitioner was also one of the members in the selection committee. It is submitted that the Petitioner, alongwith other members of Selection Committee conducted the interviews of the candidates for the other post of Associate Professor. The copy of the proceedings of the selection committee for the post of Associate Professor (two posts)_is marked and annexed as Annexure R-5.

7.7 That subsequently when the turn came for the interview for the post of professor in Sarojini Naidu Centre for Women's Studies, the petitioner appeared as applicant, before the same members of the selection committee on the very same day that is on 30.11.2016 and got selected. It is also relevant to mention here that she was the lone candidate as the other candidate called for the interview did not turned up. It is also pointed out that at the time of interview of the Petitioner there were 8 members in the panel of selection Committee and the petitioner was the adhoc Director of the WSC. This process of selection was neither comprehensive as the petitioner was eventually the lone candidate for the adhoc post and nor very objective as she interacted with the other members of the selection committee before her appearance as candidate before the same panel. The copy of the proceeding of the selection committee for the post of Professor is marked as and annexed as Annexure R-6.

66. The aforesaid affidavit of the Respondent Nos. 1 & 2 (University) makes it very clear that the selection process in respect of the post of Director/ Professor was completely farce. Otherwise also, as it was a tenure based post, the question of issuing a direction to regularize the Appellant and other identically placed persons does not arise. The Appellant who had been a part of the panel (selection committee), on the same day, becomes an applicant before the same panel and the same panel selects the Appellant for the post of Director/ Professor and now the Appellant wants regularization and such type of regularization is unheard of in service jurisprudence.

67. The Respondent University after the approval of the UGC for merger of teaching post at Sarojini Naidu Centre for Women's Studies with the regular establishment of the University has issued an advertisement on 18.09.2020 on all India basis and more than 200 applications have been received and the process of selection is already over and, therefore, in the considered opinion of this Court the University was justified in issuing fresh advertisement, otherwise, the action of the University in not issuing the advertisement would have been in a clear violation of Article 14 and 16 of the Constitution of India and paragraph 51 of the judgment delivered in the case of *Uma Devi* (supra).

68. It is reiterated that the nature of appointment of the Appellants was tenure based till the XIIth Plan or till the scheme lasts or till further orders and the same is evident from the appointment order dated 08.12.2016 and advertisement dated 12.07.2016. The Appellant has not at all challenged the terms of their appointment and the learned Single Judge has rightly arrived

at a conclusion that as the Appellants have not challenged the terms of the appointment they are estopped at this stage from challenging the same.

69. Another important aspect of the case is that post of Director is an administrative arrangement and the senior most faculty member of the Centre acts as the Director on a rotational basis for a term of three years. The Appellant was appointed on 08.12.2016 and the period expired on 08.12.2019, however, she continued as Director on account of an interim order granted by this Court on 21.08.2019 passed in W.P.(C.) No. 8532/2019.

70. In the considered opinion of this Court, the Appellant is certainly not at all entitled to continue as a Director and the post has to be filled up by issuing a fresh advertisement on a pan India basis. The Appellant does not have a right of regularization as the Appellant and other persons were appointed against a specific scheme/ project (See Brij Mohan Lal v. Union of India, (2012) 6SCC 502, Mohd. Abdul Kadir v. Director General of Police Assam, Jawaharlal Nehru Krishi Vishwavidyalaya (2009) 6 SCC 611, M.P. v. Bal Kishan Soni (1997) 5 SCC 86, NHRC v. Sheenu Saxena, W.P.(C.) No. 1268/2012)

71. In the Jamia Milia Islamia University, there is no past practice of regularizing the incumbents upon merger from plan to non-plan posts and a post has to be filled up after issuing an All India level advertisement in case plan post is converted into a non-plan post.

72. In the considered opinion of this Court, the learned Single Judge was justified in dismissing the writ petition preferred by the present Appellant

and all other identically placed persons. The Appellants were appointees under the scheme. The scheme was for a limited period and after conversion of plan post to non-plan post, the posts are to be filled up by issuing an All India advertisement and, therefore, as the Appellants do not have any vested right of regularization, no case for interference is made out in the matter.

73. The record of the case further reveals that an application bearing C.M. No. 39150/2022 has been filed in the LPA seeking the benefit of 7th Central Pay Commission from the Respondent University.

74. It has been brought to the notice of this Court that in a Writ Petition titled as Shaikh Mukibur Raheman and Ors. v. Jamia Milia Islamia through its Vice Chancellor & Ors., W.P.(C.) No. 3856/2021, the UGC has categorically stated to implement the recommendations of the 7th Central Pay Commission in respect of employees of Jamia Milia Islamia.

75. An order was also passed on 13.05.2021 in the case of ***Shaikh Mukibur Raheman and Ors*** (Supra) in respect of the aforesaid stand of the UGC and the same reads as under:

“1. Mr.Kurup, learned Counsel for R-2/UGC, states that it has been decided to implement the recommendations of the 7th Pay Commission in favour of the petitioners as earlier also the recommendations of the 6th Pay Commission were implemented in their favour. He also states that the grant of benefits of the 7th Pay Commission to the petitioners is without commenting on the status of the petitioners in the Jamia Millia Islamia. He further states that a sanction letter in that regard has already been sent to Jamia Millia Islamia and it is expected that the payment shall be released within few days.

2. The petition is disposed of. ”

76. In the considered opinion of this Court, as Jamia Milia Islamia is a Central University, 100% funded by Government of India, there appears to be no justification for not granting the benefit of 7th Central Pay Commission to the Appellants for the period they have worked and, therefore, the Appellants shall certainly be entitled for the grant of benefits arising out of Seventh Pay Commission Report. The exercise of granting the benefit as per the Seventh Central Pay Commission be concluded in accordance with law within a period of 3 months from the date of receipt of certified copy of this Order.

77. The writ appeal is dismissed with the aforesaid observations and all other identical appeals are also dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

APRIL 11, 2023

N.Khanna