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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 10th July, 2023

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W.P.(C) 8957/2020 & CM APPL. 28881/2020**SHAKEEL AHMAD**

..... Petitioner

Through: Mr. Rajat Aneja and
Ms. Aparna Shukla, Advocates.

versus

JAMIA MILLIA ISLAMIA

..... Respondent

Through: Mr. Pritish Sabharwal, Standing
Counsel with Ms. Shweta Singh, Advocate.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. This writ petition has been filed seeking the following reliefs:

"a) ISSUE an appropriate writ, order or direction by quashing the impugned office order dated 4.09.2018 issued by the Respondent university in as much as it determines the date of retirement of the Petitioner to be on 31.12.2019;

b) ISSUE an appropriate writ, order or direction by directing the respondent University to treat the petitioner as having continued in its service till he attained the age of 65 years by declaring the position of the Petitioner to be at par with that of a Teacher and consider the age of the petitioner superannuation accordingly to 65 years;

c) ISSUE an appropriate writ, order or direction by directing the respondent University to pay the salary for the period with effect from 01.01.2020 till date along with all consequential benefits such as enhanced gratuity, provided fund, etc;

d) ISSUE an appropriate writ, order or direction by directing the respondent University to grant promotion(s) to the petitioner at par with all other teachers including parity in the pay scale of Research Assistant with other research assistants in other department of the respondent university along with other Central Universities along with all consequential benefits."



2. Factual matrix to the extent relevant is that Petitioner was appointed as Research Assistant, Department of Sociology with Jamia Millia Islamia/Respondent (hereinafter referred to as “Jamia”) w.e.f. 26.08.1986 and was regularized on the same post on 08.02.1989, pursuant to recommendations of a Selection Committee.

3. It is averred in the petition that Petitioner was assigned classroom teaching and research work in light of Regulation XI and Section 2(n) of Jamia Millia Islamia Act, 1988 (hereinafter referred to as “1988 Act”). Petitioner continuously performed the duties of a whole-time teacher such as classroom teaching to undergraduate and post-graduate students, worked as a student advisor, assistant Dean student welfare, Assistant Proctor, Assistant Superintendent of Examination, Warden, member of flying squad, coordinator of admissions, course designing etc. during 32 years of his service. Petitioner holds a Masters Degree in Sociology and has qualified UGC-NET.

4. It is further averred that Allotment Committee of Jamia in its meeting held on 20.07.1992, while deciding for allocation of staff quarter had observed that Petitioner being a Research Assistant falls in the category of “Teacher” and Petitioner was in fact allotted the staff quarter. Several other incidences and documents have been referred to in the petition in support of the claim that Petitioner falls in the category of “Teacher”, which I shall advert to in later part of the judgement.

5. Genesis of this writ petition lies in the impugned office order dated 04.09.2018, uploaded on Jamia’s website, indicating Petitioner’s age of superannuation as 31.12.2019 at the age of 60 years, which



initially led to the Petitioner making several representations for correction of his age of superannuation to 65 years. Petitioner avers that the Establishment Committee and Sub-Committee of Jamia recommended that Petitioner be retired at 65 years, however, no action was taken to comply with the recommendations, constraining the Petitioner to file a writ petition in this Court being WP(C) 13058/2019, seeking directions to Jamia to treat the age of superannuation as 65 years. Writ petition was disposed of vide order dated 11.12.2019 with direction to Jamia to take a decision on the recommendations of Establishment Committee dated 17.07.2019 and Sub-Committee of the Establishment Committee dated 04.09.2019, at the earliest.

6. Thereafter Petitioner came across a Resolution dated 22.11.2019, when the same was uploaded on the website of Jamia on 20.09.2020, whereby a five-member Committee had been constituted pursuant to Executive Council's Resolution No.2.8 A(13) dated 22.11.2019. As per the Petitioner, the Committee recommended that he be treated as a teacher for limited purpose of superannuation. Despite this recommendation, no decision was taken by Jamia and as the Petitioner was to retire on 31.12.2019, he again represented to give effect to the various recommendations in his favour, but to no avail and thus the Petitioner retired at the age of 60 years and later filed the present writ petition.

7. **Contentions on behalf of the Petitioner:**

(A). Petitioner joined Jamia on 26.08.1986 as a Research Assistant in the Department of Sociology on a temporary basis and was confirmed on 08.02.1989. Petitioner has over the last



three decades, continuously performed the duties of a whole-time Teacher which included classroom teaching to undergraduate and post-graduate students, setting question papers for UG/PG students, evaluating answer scripts, supervising participatory research projects and functioning as student advisor, course designer, Assistant Dean Student Welfare, Assistant Proctor, Assistant Superintendent of Examination, Warden, member of flying squad, Co-ordinator of Admissions, etc. Additionally, Petitioner also designed various courses for Jamia such as Sociology theory, Research Methods, Sociology of Law and Quantitative Research Methods. Plethora of documents have been placed on record which would substantiate that Petitioner was involved in actual teaching. Petitioner also fulfils the criteria of educational qualification as a Teacher since he has a degree in B.Sc. (Biology), B.Ed. and Masters Degree in Sociology and has also qualified UGC-NET. None of these facts or documents are denied in the counter affidavit.

(B). Regulation XI of the Bye-Laws of Jamia, which was in existence when the Petitioner joined in 1986, even prior to the 1988 Act, provides that “Teachers” of Jamia would include a Research Assistant. Regulation XI as relied on is as follows:-

*“Section 1 of Regulation XI of the Respondent University Bye-Laws states: “1. **Teachers** of the Jamia shall be in the following grades, that is to say, Professors, Readers, Lecturers, Assistant Lecturers, Junior Lecturers, **Research Assistants**, Instructors and other teachers in so far as they take part in the teaching of the Jamia and shall be paid salaries on such scales as the Majlis-i-Muntazimah may direct.”*



(C). The 1988 Act was notified on 08.10.1988 and Section 2(n) thereof includes persons appointed for imparting instruction or conducting research in Jamia and designated as Teachers by Ordinances in the definition of “Teachers of the University”. Section 4 provides that the Jamia Millia Islamia Society shall be dissolved and all properties including rights, powers, etc. shall be transferred to and vest in the Jamia and the terms and conditions of those employed prior to the commencement of the 1988 Act will be preserved. Section 25(2) provides that Regulations and Bye-Laws in force immediately before the commencement of the Act shall be the first Ordinances of the Jamia and may be repealed or amended at any time by the Executive Council (‘EC’). Therefore, a conjoint reading of Sections 2(n), 4(vi) and 25(2) and Regulation XI makes it clear that Petitioner is covered within the definition of “Teacher”. Relevant provisions are as follows:-

“Section 2(n) :- "Teachers of the University" means Professors, Readers, Lecturers and such other persons as may be appointed for imparting instruction or conducting research in the University and are designated as teachers by the Ordinances;

Section 4. On and from the commencement of the this Act,-

(i) the society known as the Jamia Millia Islamia Society, Delhi, shall be dissolved, and all property, movable or immovable, and all rights, powers and privileges of the said Society shall be transferred to and vest in the University and shall be applied to the objects and purposes for which the University is established; Dissolution of the Jamia Millia Islamia Society and transfer of all property to the University.

(ii) all debts, liabilities and obligations of the said Society shall be transferred to the University and shall there after be discharged and satisfied by it;



(vi) subject to the provision of this Act, every person employed immediately before the commencement of this Act in the Jamia Millia Islamia, Delhi, shall hold such employment in the University by the same tenure and on the same terms and condition and with the same rights and privileges as to pension and gratuity as he would have held under the Jamia Millia Islamia, Delhi, if this Act had not been passed.”

Section 25 (2): *The regulations and bye-laws in force immediately before the commencement of this Act shall be the first Ordinances of the University and may be repealed or amended at any time by the Majlis-i-Muntazimah (Executive Council).”*

(D). Ordinance 23 (XXIII) provides that academic staff of Jamia shall mean and include such categories of staff as are appointed to conduct research or to academically assist in teaching/research and this further strengthens the case of the Petitioner that he is a teaching faculty. Section 6 of Ordinance 10(X) enumerates the categories/classes pertaining to accommodation and delineates the entitlements on the basis of different Grade Pay. The Allotment Committee of Jamia in its meeting held on 20.07.1992, while deciding the case of the Petitioner for allocation of staff quarters in Teachers’ hostel observed that after verifying Regulation XI and Section 2(n) of the 1988 Act, there was merit in his representation that he was a Teacher. Petitioner was thus included in the list of seniority for allotment on the ground that as a Research Assistant he fell within the category of “Teachers” and was allotted a quarter.

Relevant observations are as follows:-

“The name of Janab Shakeel Ahmad Saheb, Research Assistant, Department of Sociology, had not been included in the list of seniority for the allotment of vacant houses presented in the meeting held on 20th July, 1992. On the representation of Janab Shakeel Ahmad that he falls within the category of teachers and to support this argument he quoted Regulation XI and Jamia Act



2 (n). After verifying Regulation XI and Jamia Act 2 (n), his representation was found to be valid about the fact that Research Assistants fall within the category of teachers.”

(E). Petitioner has availed earned leaves and casual leaves from time to time as per entitlements of the Teachers as also leaves in view of the duties performed during vacations in accordance with Ordinance 5(V) and Section 5(i)(b), which are only available to Teachers. The Establishment Committee of the Jamia in its Meeting held on 17.07.2019 recommended that the age of superannuation of the Petitioner be taken as 65 years after examining his case under the relevant Statute, Ordinances and Regulations as well as the actual duties assigned to him and performed by him. The Sub-Committee of the Establishment Committee in its Meeting held on 04.09.2019 categorically recommended that Petitioner be considered as Assistant Professor at par with regular teaching faculty. This Court, in the earlier round of litigation, directed Jamia to take a decision on the recommendations of these Committees. A five-member Committee constituted by Jamia held a meeting on 23.12.2019 and recommended that Petitioner be treated as Teacher for limited purpose of superannuation, however, even these recommendations never took the form of a decision by the EC. Therefore, all positive recommendations by Jamia's own Committees were given a go-by and Petitioner was made to retire illegally at the age of 60 years. Post his retirement, EC held a meeting on 26.06.2020 and referred the matter to UGC for consideration, which was unwarranted.

(F). Several other documents placed on record are clear pointers to the fact that Petitioner was all-through treated as a



Teacher by Jamia, which includes a letter dated 23.08.2004 from Jamia to HOD, Sociology stating that Research Assistant is an academic staff; time tables assigning full-time classroom teaching to the Petitioner; membership of Jamia Teachers Association which is open only for Teachers who pay monthly membership fee and official communication dated 05.08.2009 by HOD, Sociology to the Internal Audit Office of Jamia stating that status of Research Assistant is that of a Teacher.

(G). Regulation XI was the governing Regulation in Jamia immediately before commencement of the 1988 Act and continues to be in operation by way of a deeming fiction created by Section 25(2) of the Act which saves the operation of Regulations existing before the commencement of the Act and is the First Ordinance of Jamia. Existence and operation of Regulation XI is admitted by Jamia in several paragraphs of the counter affidavit and is extracted and relied on in the judgment of this Court in *S. Dildar Haider v. Jamia Milia Islamia and Ors.*, MANU/DE/8920/2006.

(H). Case of the Petitioner is squarely covered by the judgments of the Supreme Court in *P.S. Ramamohana Rao v. A.P. Agricultural University and Another*, (1997) 8 SCC 350 and this Court in *Krishan Gopal & Anr. v. Union of India & Ors.*, 2012 (130) DRJ 170(DB); *Dr. Lakshmy Anantha Raman v. Union of India & Others*, 2017 SCC OnLine Del 6913, *S. Dildar Haider (supra)*, *Shafiqul Ain Usmani v. Jamia Millia Islamia & Ors.* in W.P.(C) 21367/2005 decided on 16.05.2008, and judgments of the other High Courts in *Kamla Kant Roy*



And Ors. And Upendra v. The State of Bihar And Ors., 1984 (32) BLJR 495, Rajendra Prasad Thapliyal v. Union of India and others, 2016 SCC OnLine Utt 1996 and Dr. M.R. (Mohan Ramuji) Deshmukh v. The State of Madhya Pradesh and others in W.P.(C) 2751/2017 decided on 28.04.2017.

8. **Contentions on behalf of the Jamia:**

(A). Jamia Millia Islamia is a Central University, governed by 1988 Act and fully funded by University Grants Commission (UGC). All matters pertaining to Jamia including maintenance, expenditure, service conditions, mode of recruitment, scales of pay, age of superannuation, etc. are strictly governed by UGC Guidelines, issued from time to time and notified by UGC, in consonance with decisions taken by Department of Education, Ministry of Human Resource Development, Government of India (MHRD). MHRD, by its letter dated 23.03.2007, communicated to UGC its decision of enhancement of superannuation age from 62 to 65 years for teaching positions in the Centrally funded Institutions. The letter was communicated to the Registrars of all Central Universities for necessary action. Jamia gave effect to the UGC letter and adopted the decision in its EC meeting held on 30.04.2007. Pursuant to the letter dated 12.05.2017 sent by UGC, Jamia by its Resolution passed in the EC meeting held on 27.09.2017 approved the amendment in Regulation XXXVII pertaining to the age of retirement of the staff from 62 to 65 years.

(B). Amendment to Regulation XXXVII and the UGC letter dated March, 2007 as well as MHRD letter dated 23.03.2007



cumulatively reflect that enhancement of superannuation age to 65 years was only in respect of 'full-time teachers of the University'. Scheme of revision of pay of teachers and equivalent cadres in Universities and Colleges following the revision of Pay Scales under 7th CPC, issued on 02.11.2017 by MHRD provides that there are only three designations in respect of teachers in the University, namely, Assistant Professors, Associate Professors and Professors and Petitioner does not fall under any of the three categories. Relevant part of the scheme is as follows:-

"There shall be only three designations in respect of teachers in universities and colleges, namely, Assistant Professors, Associate Professors and Professors. Also, there shall be no change in the present designations in respect of Library and Physical Education Personnel at various levels."

(C). By a letter dated 31.12.2008, MHRD communicated to UGC that there shall only be three designations in respect of teachers in Universities and Colleges i.e. Assistant Professors, Associate Professors and Professors and this was particularly in the context of superannuation age and EC of the Jamia adopted this position vide its Resolution No.8. Relevant paragraph of the letter is as follows:-

"Subject:- Scheme of revision of pay of teachers and equivalent cadres in universities and colleges following the revision of pay scales of Central Government employees on the recommendations of the Sixth Central Pay Commission."

Sir,

I am directed to say that the Government of India have decide, after taking into consideration the recommendations made by the University Grants Commission (UGC) based on the decisions taken at the meeting of the Commission held on 7-8 October, 2008, to revise the pay scales of teachers in the Central Universities. The revision of pay scales of teachers shall be subject to various provisions of the Scheme of revision of pay



scales as contained in this letter, and Regulations to be framed by the UGC in this behalf in accordance with the Scheme given below. The revised pay scales and other provisions of the Scheme are as under:-

1. General

(i) There shall be only three designations in respect of teachers in universities and colleges, namely, Assistant Professors, Associate Professors and Professors. However, there shall be no change in the present designation in respect of Library and Physical Education Personnel at various levels.

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8. Other terms and conditions:

(f) Age of Superannuation:

(i) In order to meet the situation arising out of shortage of teachers in universities and other teaching institutions and the consequent vacant positions therein, the age of superannuation in Central Educational Institutions has already been enhanced to sixty five years, vide the Department of Higher Education letter No.F.No.1-19/2006-U.II dated 23.3.2007, for those involved in class room teaching in service for a longer period. Consequent on upward revision of the age of superannuation of teachers, the Central Government has already authorized the Central Universities, vide Department of Higher Education D.O. letter No.F.1-24/2006-Desk(U) dated 30.3.2007 to enhance the age of superannuation of Vice-Cancellors of Central Universities from 65 years to 70 years, subject to amendments in the respective statutes, with the approval of the competent authority (Visitor in the case of Central Universities).

(ii) Subject to availability of vacant positions and fitness, teachers shall also be re-employed on contract appointment beyond the age of sixty five years up to the age of seventy years. Re-employment beyond the age of superannuation shall, however, be done selectively, for a limited period of 3 years in the first instance and then for another further period of 2 years purely on the basis of merit, experience, area of specialization and peer group review and only against available vacant positions without affecting selection or promotion prospects of eligible teachers.

(ii) Whereas the enhancement of the age of superannuation for teachers engaged in class room teaching is intended to attract eligible persons to a career in teaching and to meet the shortage of teachers by retaining teachers in service for a longer period, and whereas there is no shortage in the categories of Librarians and Directors of Physical Education, the increase in the age of



superannuation from the present sixty two years shall not be available to the categories of Librarians and Directors of Physical Education.”

(D). Additionally, the EC of the University, which is the highest body, approved the age of superannuation for Research Assistants working in different Departments of the Jamia as 60 years by Notification dated 05.08.2021 as per clarification rendered by UGC vide its letter dated 16.03.2021 based on UGC Regulations, 2018 (hereinafter referred to as ‘UGC Regulations’). Jamia has strictly followed the decision of EC, which flows from UGC’s clarification. Statute 14 of Schedule of the 1988 Act stipulates that the EC, in addition to all other powers vested in it, has the power to create teaching and academic posts, define the emoluments as also the duties and conditions of service of Professors, Readers, Lecturers and other academic staff. Conditions of service of Jamia Teachers are governed by the Agreement of Service signed by them and no such agreement was ever executed between the Jamia and the Petitioner since he was appointed as a Research Assistant.

(E). Every Statute, Regulation and Ordinance made under the Act is required to be published in Official Gazette as per Section 39(1) of the 1988 Act. Regulation XI on which reliance is placed by the Petitioner, was never published in the Official Gazette and has no force of law. Moreover, it was only for the purpose of conditions of service entered into by way of an agreement between the Teachers and the Jamia and can have no application to the Petitioner. Jamia in its Ordinance VI titled “Terms and Conditions of Service of Jamia Employees (other



than Teachers, Registrar and Finance Officer)” notified on 09.11.2017 has clearly stipulated the age of retirement of its employees as 60 years and there is no challenge to the same.

(F). In *Dr. Meera Sood v. University of Delhi and Others*, 2021 SCC OnLine Del 4939; *Swarn Bhanot v. University of Delhi and Others*, 2019 SCC OnLine Del 7780, *Suresh Kumar Sud & Ors. v. UOI and Ors.*, 2011 (124) DRJ 756, and *Jitendra Singh Naruka v. University of Delhi & Ors.*, 2016 SCC OnLine Del 5893, this Court has negated the contentions of the Petitioners therein that posts outside the three categories, namely, Assistant Professors, Associate Professors and Professors can be treated as “Teachers” and upheld the stand of the University also holding that service conditions are a matter of policy and is best left to the employer. The judgments relied upon by the Petitioner are inapplicable being on different facts and the Courts were neither shown nor have considered the MHRD and UGC letters/Regulations in this context.

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

10. The only issue that this Court is called upon to decide is whether the age of superannuation of the Petitioner is 65 years or 60 years. Petitioner was appointed as a Research Assistant on 21.08.1986 and was confirmed in the said post on 08.02.1989. Pursuant to a letter dated 27.07.1988 issued by the Central Government regarding service conditions of teachers in all Central Universities and their Colleges as well as deemed Universities enhancing the age of retirement of teachers, UGC issued a Notification on 24.12.1998 stipulating 62



years as age of superannuation for University and College teachers. S. Dildar Haider, an Instructor in Leather Craft working in Jamia was retired at the age of 60. He filed a writ petition in this Court being W.P. (C) 2829/2003 questioning the decision of Jamia to retire him at 60 years of age and sought a direction to continue him till he completed 62 years. Writ petition was allowed on 18.08.2006 by this Court on the ground that Jamia did not deny that as per Ordinances and Regulations of Jamia, Instructors fell in the category of academic and teaching staff, which position remained unchanged after the 1998 UGC Guidelines as also that functionally too, Petitioner was doing some teaching work. The Court noted that non-teaching personnel such as Registrar, Finance Officer etc. were given the benefit of retiring at 62 years on parity with teachers and taking note of UGC's letter dated 06.09.2002 wherein it was stated that posts of Instructor, Research Assistant etc. as mentioned therein should invariably be given benefits as applicable to other non-teaching posts in the University, held that Instructors cannot be worse of than staff members who had nothing to do with academic and teaching and were performing administrative duties.

11. This led to the Jamia issuing a Notification dated 20.10.2008 notifying that in view of the judgment of the court in *S. Dildar Haider (supra)* and Section 2(n) of 1988 Act as well as Regulation XI, Instructors working in different departments of the Jamia will be treated as “teachers”. Taking a clue from this Notification and realizing that his date of superannuation has been notified as 60 years, Petitioner made representation to enhance his age of superannuation to 65 years.



12. Superannuation age of 65 years has its genesis in the letter dated 23.03.2007 issued by MHRD communicating to UGC enhancement in age of superannuation from 62 to 65 years for teaching positions in centrally funded institutions. The decision was communicated by UGC to the Registrars of all the Central Universities and Jamia also gave effect to the decision in its EC meeting held on 30.04.2007. By a Resolution, the EC in its meeting held on 27.09.2017 approved the amendment to Regulation XXXVII regarding enhancement of age of superannuation of teachers from 62 to 65 years.

13. From the aforesaid chronology and narrative, it is clear that there is no dispute that the age of superannuation of teachers stands enhanced from 62 to 65 years in Jamia and the scope of the argument is narrowed to the question as to whether the Petitioner, appointed to the post of “Research Assistant”, is a “teacher” so as to be entitled to the benefit of age enhancement. Pithily put, Petitioner relies on Regulation XI, Ordinances V and XXIII as well as Section 2(n) etc. of 1988 Act and other documents evidencing actual teaching, authored by Jamia wherein he has been referred to as a teacher, apart from a strong reliance on the judgments in *S. Dildar Haider (supra)*, *Shafiqul Ain Usmani (supra)*, *Krishan Gopal & Anr. (supra)* etc. University/Jamia, on the other hand, relies on letters/Regulations of MHRD/UGC to contend that only three categories are recognized as teacher viz. Assistant Professor, Associate Professor and Professor and also argues that Section 2(n) of the 1988 Act is inapplicable to the Petitioner since the Petitioner was never designated as a teacher. Reliance was placed on several judgments of this Court based on



MHRD letters and UGC Regulations to support the stand that a Research Assistant is outside the purview of the definition of “teacher” as stipulated by the UGC, whose Regulations are binding on Jamia being a centrally funded University.

14. It is correct that Jamia is a centrally funded University but it is equally true that it is an autonomous institution governed by its own statute i.e. 1988 Act. Section 23(f) read with 25(1)(o) of the 1988 Act empowers Jamia to regulate terms and conditions of service of its employees including pension, insurance, disciplinary action etc. and EC is the highest administrative body responsible for taking decision in the matter which includes age of superannuation.

15. Section 2(n) of 1988 Act defines “teachers of the University” as Professors, Readers, Lecturers and such other persons as may be appointed for imparting instructions or conducting research in the University and are designated as teacher by the Ordinances. Regulation XI provides that teachers of Jamia shall be in the following grades i.e. Professors, Readers, Lecturers, Assistant Lecturers, Junior Lecturers, Research Assistants, Instructors and other teachers insofar as they take part in teaching. Section 2(n) and Regulation XI are extracted hereunder for ready reference :

“Section 2(n) :- "Teachers of the University" means Professors, Readers, Lecturers and such other persons as may be appointed for imparting instruction or conducting research in the University and are designated as teachers by the Ordinances;

REGULATION XI

1. *Teachers of the Jamia shall be in the following grades, that is to say, Professor, Readers, Lecturers, Assistant Lecturers, Junior Lecturers, Research Assistants, Instructors and other teachers in so far as they take part in the teaching of the Jamia and shall be paid salaries on such scales, as the Majlis-i-Muntazimah may direct.*

2. *The conditions of service of Jamia teachers shall be those*



embodied in the Agreement of Service annexed hereto or, in agreement substantially to like effect, and every teacher shall sign the agreement before he/she enters upon his/her duties or as soon as possible thereafter.”

16. There is a dispute between the parties to the *lis* on the publication of Regulation XI and while the Petitioner contends that the Regulation existed when he was appointed in 1986 and his duties were assigned in accordance with this Regulation and continues to exist even today and relied upon Minutes of Meetings of Committees of Jamia etc., on this aspect, Jamia contends that the Regulation was never published. To my mind, the stand of Jamia is belied by the fact that Regulation XI finds mention in the Minutes of meeting of the Committee constituted pursuant to EC Resolution dated 22.11.2019 for the purpose of examining recommendations of Establishment Committee and its sub-Committee, as directed by the Court on 11.12.2019. More importantly, Regulation XI is also taken note of by this Court in the judgment in *S. Dildar Haider (supra)* and it is not Jamia's case that the Regulation was wrongly extracted or noted by the Court and/or an appeal was filed against the said judgment. Infact it is pertinent to note that after the judgment was delivered, Jamia issued a Notification dated 20.10.2008 in view of the said judgment and in the said Notification there is a clear reference to Regulation XI. The Notification is extracted hereunder:-

“Estab.1/RO/JMI/2008/

October 20, 2008

NOTIFICATION

The Vice-Chancellor, Jamia Millia Islamia, on the verdict of Hon'ble High Court of Delhi in a case of Mr. Syed Dildar Haider and on the opinion of the Legal Advisor of the University as per S 2(n) of the JMI Act-1988 and the then Ordinance XI, has approved that the Instructors working in the different departments of JMI will be treated as teachers of the University.”



referred to and relied upon Regulation XI and there is no categorical denial in the counter affidavit in response to para 3 of 'Para-wise reply on merits' and paras 3, 8, 11 and 12 of 'brief facts'. This issue can be examined from another angle. Petitioner has categorically averred that Regulation XI existed when he was appointed, prior to the enactment of 1988 Act. Therefore, the Regulation being in force immediately before the commencement of the 1988 Act shall be saved by Section 25(2) of the 1988 Act and is the first Ordinance of Jamia and has not been repealed. Even on this score, case of the Petitioner is covered under Section 2(n) of the 1988 Act which stipulates that Teachers of the University means Professors, Readers, Lecturers and such other persons as may be appointed for imparting instructions or conducting research and designated so by the Ordinances. Section 25(2) is as follows:

"25. Power to make Ordinances:

(2) The regulations and bye-laws in force immediately before the commencement of this Act shall be the first Ordinances of the University and may be repealed or amended at any time by the Majlis-i-Muntazimah (Executive Council)."

18. In addition to the provisions of the Regulation/Ordinances and 1988 Act, Petitioner has placed on record plethora of documents to support his case that from the time he was appointed he has been actively involved in classroom teaching, course designing, setting question papers for UG and PG students, evaluating answer-scripts, supervising/guiding in dissertation for Masters students, designing courses for sociology, designing Research Methods and Quantitative Research Methodology etc. since he was qualified, possessing educational qualifications of B.Sc. (Biology), B.Ed., M.A. (Sociology) and qualified UGC-NET.



19. Additionally, Petitioner has detailed several appointments held by him which are pointers to his recognition in the field of teaching such as Assistant Proctor, Assistant Dean of Student Welfare, Member of Flying Squad, Assistant Superintendent, Hostel Warden, Student Advisor, NSS Programme Officer, Member NAAC Commission, Tabulator (Marksheets/Results), Member Convocation Committee, Admission Coordinator and each of these are supported by documents appended to the writ petition. As a ready reference and illustratively extracts of some of the documents are placed below:



DEPARTMENT OF SOCIOLOGY
JAMIA MILLIA ISLAMIA
 Jamia Nagar, New Delhi - 110 025
 Phone: 0851717/345

Ref. No. Dated. 27th March, 2001

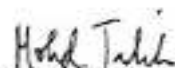
To Whom It May Concern

Mr. Shakeel Ahmad's present assignment in the Department of Sociology relates to research assistantship which, for all practical purposes involves full-fledged teaching, and engagement in Sociological research. Due to the all-round aptitude and developed social communication skills, Mr. Shakeel Ahmad shoulders important responsibilities in the maintenance of corporate life of the university. Some of these assignments include wardenship of student's residential hostels, advisor to the students' subject association, proctorship as well as the administrative conduct of the university examinations.

As researcher and field worker, Mr. Shakeel Ahmad has demonstrated significant research capabilities. He is the author of an important field survey based report on the social profile of a primary school in a village in India.

Mr. Shakeel Ahmad is also a competent teacher who has shown demonstrable merit in relating to an immense social and cultural diversity of students in sociology department. Such diversity usually requires of a teacher a desirable flexibility of mind, patience for good listening habit and a willingness to innovate in teaching and communication pedagogies and methodologies.

If an opportunity of a professionally developed and challenging work scenario was provided, Mr. Shakeel Ahmad should be able to carry it out with sincerity, intelligence and hard work.


 (Prof. Mohd. Talib)
 Deptt. of Sociology
 Jamia Millia Islamia
 New Delhi - 110 025
 INDIA



JAMIA MILLIA ISLAMIA

Najeeb Jung, IAS (Retd.)

Vice-Chancellor

Maulana Mohamud Ali Jauhar Marg, New Delhi-110025
Email: vc@jmi.ac.in

Tel.: 26984630, 26985180 Fax: 00-91-11-26981232
Oram: JAMIA website: <http://www.jmi.ac.in>



Vice-Chancellors:

Ref: F.4(INT)/2009

12 November 2009

Mohamed Ali
1920-23

Abdul Majeed Khwaja
1913-25

Zahir Hussain
1926-48

Mohammad Mujeeb
1948-73

Masud Hussain Khan
1973-78

A. J. Kidwai
1978-83

Ali Ashraf
1983-89

Syed Zahoor Qasim
1989-91

Bashiruddin Ahmed
1991-96

M. A. Zaki
1997-2000

Syed Shahid Mahdi
2000-04

Mushirul Hasan
2004-09

Dear Mr. Ahmad,

I am laying great emphasis on the Centre for Coaching and Career Planning, and I hope that a substantial number of students are able to effectively compete at the national level. The University has specially appointed Mr. Mohammad Tarique as Coordinator for this Centre and I am in the process of appointing other experienced people also.

Mr. Mohammad Tarique will be in touch with you and you are expected to provide full cooperation in holding classes and taking the Centre to greater heights.

Please plan a schedule so that your regular classes as well as your attention to the Coaching Centre can proceed seamlessly. I will be personally reviewing this on a regular basis.

best wishes,

Yours sincerely

(Najeeb Jung)

Mr. Shakeej Ahmad
Dept. of Sociology
Jamia Millia Islamia.

Copy to:

1. Mr. Mohammad Tarique - kindly contact my office to convene a review meeting by the end of this month.
2. Dean, F/o Social Sciences
3. Head, Dept. of Sociology.



DEPARTMENT OF SOCIOLOGY

JAMIA MILLIA ISLAMIA

Jamia Nagar, New Delhi - 110 025

Phone: 6831717/345

R.R. P.

Dean C

Ref. No. PB-580
19/6/2000

Dated: 19/6/2000

19th June, 2000

The Dean,
Faculty of Social Sciences,
Jamia Millia Islamia,
New Delhi- 110 025

Dear Sir,

Kindly refer your letter dated 16th June, 2000 regarding exam works. I hereby submit the detail of exam works to be assigned to teachers in the department. The detail is as under:

1. Names of Committee Members:

(i) Prof. Mohd. Talib	Professor
(ii) Miss. Sheena Jain	Reader
(iii) Dr. Savyasaachi	Lecturer
2. Names of the paper setters:

(i) Prof. S.M.A. Rizvi	
(ii) Prof. Mohd. Talib	
(iii) Dr. Savyasaachi	
3. Names of the Coder & Decoder:

(i) Mr. Ravi Kapoor	Coder
(ii) Mr. Shakeel Ahmad	Decoder
4. Members of the Interview Board:

(i) Head	Chairman
(ii) Prof. Mohd. Talib	Member
(iii) Miss Sheena Jain	Member
(iv) Mr. Shakeel Ahmad	(Technical Asstt.) Research.

Regards,

Sincerely,

(Prof. S.M.A. Rizvi)

HEAD

HEAD



جامیہ ملیہ اسلامیہ
JAMIA MILLIA ISLAMIA

JAMIANAGAR, NEW DELHI - 110 025

Phones : 8831717-8838044-8838176-8834076

Gram : 'JAMIA' — Fax : 8821232

Registrar Office

دفتر مسجل

F.No.

/R.O(Estt)/2001

10.8.2001

OFFICE ORDER

On the recommendation of the Proctor, the Vice-Chancellor, JMI has agreed to reconstitute the team of Asstt. Proctors, for the academic session 2001-2002 and has approved the appointment of following faculty members as Asstt. Proctor with immediate effect till further orders :

S.No	Name of the Faculty Members	Department	Faculty/Institution
01.	Dr. Anwar Shahzad Siddiqui, Lecturer	Deptt. of Electrical Engg.	Engg. & Tech.
02.	Mr. Mohd. Suhaib, Lecturer	Deptt. of Mech. Engg.	--do--
03.	Mrs. Kahkashan Y. Danyal, Lecturer	Faculty of Law	Law
04.	Mr. S.H. Jamal Abidi, Dy. Librarian	Dr. Z.H. Library	Dr. Z.H. Library
05.	Mr. Abul Hasan, Lecturer	Univ. Polytechnic	Univ. Polytechnic
06.	Dr. Sharif Ahmad, Reader	Deptt. of Chemistry	Natural Sciences
07.	Dr. Shahnaz Anjum, Reader	Deptt. of Urdu	Hum. & Lang.
08.	Dr. K. Joseph, Lecturer	Deptt. of English	--do--
09.	Ms. Shukla Sawant, Lecturer	Deptt. of Fine Arts	Education
10.	Dr. Furqan Ahmad, Lecturer	Deptt. of Political Science	Social Sciences
11.	Mr. Shakeel Ahmad, Res. Asstt.	Deptt. of Sociology	--do--

M.N.A. Chaudhary
(M.N.A. Chaudhary)
Registrar

Copy for information & necessary action to :

1. The Finance Officer, JMI
2. All Deans of faculties/Heads of Departments, JMI
3. The Advisor (Security) to Vice-Chancellor, JMI
4. The Proctor, JMI
5. The Provost (Boys), JMI
6. The Concerned faculty members.
7. The Secretary to Vice-Chancellor, JMI
8. The Accounts Officer, JMI
9. The Sr. P.A. to Registrar, JMI

Truly

Signature Not Verified

Digitally Signed
By: KAMAL KUMAR
Signing Date: 13.07.2023
17:14:22

W.P.(C) 8957/2020



of Sociology for the month of 16/11/22 to 15/12/22

Annexure P8

Sl. No.	Name of Employees	Attendance	Vacations Winter/Summer	Casual Leave	Special Casual Leave	Compensatory Leave	Earned Leave	Maternity Leave	Sabbatical Leave	Study Leave	Medical Leave	TOTAL	Extra Ordinary Leave	Advance	GRAND TOTAL
1.	Prof. Mohini Anjum, Head	11	14	01						04		30			30
2.	Prof. Mohd. Talib	00										30	30		30
3.	Mr. Ravi Kapoor	15	14	01								30			30
4.	Ms. Sheena Jain	16	14									30			30
5.	Dr. Neshat Quaiser	16	14									30			30
6.	Dr. Biswajit Das	16	14									30			30
7.	Dr. Savyasmachi	09	14				07					30			30
8.	Dr. Arvinder Kaor	05	14					11				30			30
9.	Mr. Shakeel Ahmad	15	14	01								30			30
10.	Mr. Deepak Koin	16	14									30			30
Non-Teaching Staff															
1.	Mr M. Majid Siddiqui, LDC	28		02								30			30
2.	Mr. Ali Hasan, Peon	27					03					30			30

Details of Leave of the last Month w.e.f. 22nd

Date: 17/12/22

By: [Signature]
 Head of Sociology
 Junior College
 New Delhi-110005

Signature Not Verified

Digitally Signed
 By: KAMAL KUMAR
 Signing Date: 13.07.2023
 17:14:22

W.P.(C) 8957/2020



20. It would be profitable to refer to some of the documents which, in my view, completely support the case of the Petitioner and are in the nature of recommendations of the Committees of Jamia. The Establishment Committee formed to consider whether the post of the Petitioner falls within the ambit of teacher in its meeting held on 17.07.2019 recommended enhancement of age of superannuation of the Petitioner as 65 years looking at his entire period of service in Jamia towards teaching, examination, leave entitlement etc. Yet another Sub-Committee of the Establishment Committee formed for this very purpose in its meeting held on 04.09.2019 recommended that Petitioner be considered as Assistant Professor at par with regular teaching faculty of Jamia. To the same effect are official communications dated 19.09.2002 from HOD (Sociology) to Vice-Chancellor, Jamia, letter dated 23.08.2004 from Jamia to HOD (Sociology) and communication dated 05.08.2009 between Development Officer and Department of Sociology in 1998, which recognised the status of Petitioner as a teacher. For ready reference, relevant part of the minutes of the Establishment Committee are as follows:

“7. Request of Mr. Shakeel Ahmad for superannuation at par with teachers.

The Committee has examined the matter in the light of the relevant Statute, Ordinance, Regulations as well as duties performed, duly assigned by Board of Studies & other responsibilities discharged by Mr. Shakeel Ahmad, Research Assistant in the Department of Sociology and the plea taken by the Hon'ble High Court of Delhi in the matter of Mr. Dildar Haider, Instructor, Faculty of Education. After detailed discussion and taking into consideration his entire period of service in Jamia towards teaching, examination, leave entitlement as well as contribution to the corporate life of the University, the Committee has recommended that as a special case his age of superannuation as Research Assistant may be treated as 65 years by considering the



post of Research Assistant under Supernumerary Teaching post w.e.f. 01.01.2020 (i.e. from the next day of attaining 60 years of age on 31.12.2019) till he attains the age of 65 years or vacate the said post on account of any reason. In case of any such event, the said supernumerary status shall stand abolished and Research Assistant post in the approved pay-scale will be advertised under Non-teaching category to avoid any such claim in future and this case shall not be quoted as precedence.

The case shall be placed for consideration in the forthcoming meeting of the Executive Council.”

21. Petitioner has also laboured hard to place on record the daily attendance register and time-tables which are extracted above which shed lights on his functioning as a teacher at Jamia. It is emphasised that teachers do not sign daily attendance register and only the non-teaching staff does. It is averred in the writ petition that the Allotment Committee of Jamia in its meeting held on 20.07.1992 while deciding the case of the Petitioner for allocation of staff quarter in Teacher's Hostel observed that in view of Regulation XI and Section 2(n) of 1988 Act, Research Assistants fall in the category of teachers. Clause 6 of Ordinance 10(X) defines the entitlement for quarters based on the grade pay and Petitioner was allotted the quarter in the category of teacher. It is averred by the Petitioner in ground "F" of the writ petition that the Allotment Committee was presided by the Vice-Chancellor, Jamia and therefore, his recognition as a teacher was by no less than the Head of the institution. Response to this averment is totally evasive and vague in the counter affidavit with there being no denial to the observations of the Committee or the fact that it was presided by the Vice-Chancellor. It is only stated that it is the EC which is the final decision-making body and not the Vice-Chancellor. This stand, however, in my view, cannot aid Jamia for the simple reason that the observations of the Vice-Chancellor cannot be



meaningless and that too, when the Petitioner was, in fact, allotted a quarter pursuant to the said recommendation. Relevant part of the observations of the Allotment Committee is as follows:

“The name of Janab Shakeel Ahmad Saheb, Research Assistant, Department of Sociology, had not been included in the list of seniority for the allotment of vacant houses presented in the meeting held on 20th July, 1992. On the representation of Janab Shakeel Ahmad that he falls within the category of teachers and to support this argument he quoted Regulation XI and Jamia Act 2 (n). After verifying Regulation XI and Jamia Act 2 (n), his representation was found to be valid about the fact that Research Assistants fall within the category of teachers”.

22. Last but not the least, Petitioner has taken a categorical position in the writ petition that he has availed “Earned and Casual Leave” regularly as per entitlement of teacher in accordance with Ordinance 5(V) which deals with “leave rules applicable to teachers” and in the Rules, “teacher” has been defined to mean whole time permanent teacher of the University. In response to the averment, Jamia has stated in the counter affidavit that *“the paras are admitted as the same are provisions and ordinances reproduced from Jamia Millia Islamia Act, 1988”*.

23. Before proceeding further, this Court also takes notice of the fact that Petitioner has in very many words repeatedly asserted in his representations to Jamia and pleadings before this Court as also during the course of hearing that he has been performing the duties of a teacher including classroom teaching. The counter affidavit/additional affidavit is totally evasive in responding to the said submission in addition to the fact that apart from stating that Petitioner was appointed to the post of Research Assistant, it is not even described or detailed as to the actual duties that he was performing or tasks that he

Signature Not Verified was undertaking in a stretch of nearly 32 years while he was in service



of Jamia. It is also not the stand of Jamia that other documents placed on record by the Petitioner to substantiate his case that he was working as and recognised as a teacher are forged or fabricated and on the contrary they have been accepted to be correct.

24. It is true that the UGC in its regulation has ordained that only Assistant Professor, Associate Professor and Professor fall in the category of “teacher” but at the same time, this Court cannot overlook the inlaid mosaic of the statutory provision and Regulation/Ordinance of Jamia where the expression “teacher” clearly includes a Research Assistant. Section 2(n) is indicative of the legislative intent to give an expanded meaning to the word “teacher” and the widely couched language, in my view, leads to an irresistible conclusion that the legislature did not intend to constrict the word “teacher” but the objective was to import a broader concept and which is why Section 2(n) is not restricted to Professors, Readers, Lecturers but includes those imparting instructions or conducting research. Once the legislature has given an expansive definition, this Court finds no reason to artificially constrict or restrict it to classroom teaching alone *albeit* in the present case, Petitioner has been able to establish that he crosses even this hurdle as he was actively involved in classroom teaching. Provision of Section 2(n) is buttressed by Regulation XI which really is also the heart of the matter as teacher therein includes a Research Assistant. A conjoint reading of Section 2(n) of 1988 Act, Regulation XI, Ordinance 5(V) and plethora of documents placed on record manifest that Petitioner would be covered under the definition of a teacher and thus entitled to retire at the age of 65 years instead of 60 years.



25. The judgments relied upon by Jamia cannot further its cause for a singular reason that in none of the judgments Regulation XI or Section 2(n) of the 1988 Act was under consideration. All the judgments are premised on the letter of the MHRD dated 31.12.2008 and/or the UGC's Regulations, which have a general bearing but cannot override the special Regulation and more importantly, the Statute i.e. 1988 Act by virtue of which the post of a Research Assistant in Jamia where the incumbent imparts teaching is covered under the definition of "Teacher". In fact, it would be relevant to note that in each of these judgments, the Courts have drawn a distinction by noting that the incumbents on the respective posts were not involved in classroom teaching and the posts were not covered by any Statute or Regulation.

26. For all the aforesaid reasons, the writ petition is allowed quashing the impugned Office Order dated 04.09.2018 which determines the date of retirement of the Petitioner as 31.12.2019 at the age of 60 years. *Ex-consequenti*, Petitioner will be reinstated in service and permitted to retire at the age of 65 years, with 50% back-wages for the period commencing 31.12.2019 till re-instatement and other consequential benefits.

27. Writ petition stands disposed of alongwith the pending application.

JYOTI SINGH, J

JULY 10, 2023/KA/kks/ck