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

% Date of Decision: 24th May 2023

+ W.P.(C) 1213/2017

IQBAL HUSSAIN Petitioner

Through: Ms. Indrani Ghosh, Advocate

versus

JAMIA MILLIA ISLAMIA UNIVERSITY AND ORS

..... Respondents

Through: Mr. Pritish Sabharwal, Standing
Counsel, Jamia Millia Islamia University.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner seeking the following reliefs:-

“a) Pass an appropriate writ, order or direction in the nature of declaration, declaring that non-grant of pay scale of Rs. 9300-34,800 with Grade Pay of Rs. 4200, as was being given to other Store-keepers (including juniors), doing the same type of work, by the Respondent No.1 University as arbitrary and discriminatory and that the same infringed the fundamental rights of the Petitioner guaranteed under ARTICLES 14, 16 and 39(d) of the Constitution of India;

(b) Pass an appropriate writ, order or direction in the nature of mandamus commanding the Respondent No.1 University to grant the revised pay scale of Rs. 9300-34,800 with Grade Pay of Rs.4200, as is being given to the other store-keepers, including the petitioner's juniors, employed in the University in the same category (doing same type of work).”

2. Petitioner was appointed to the post of Storekeeper in the Centre of Dental Studies with Jamia Millia Islamia University/ Respondents (hereinafter referred to as the ‘University’) on recommendations of a Selection Committee in its Meeting held on 22.01.2007 in the pay scale Rs.4000-6000. After the 6th CPC

recommendations were adopted by the University, Petitioner was placed in a replacement scale of Rs.5200-20200 with Grade Pay of Rs.2400/-. Petitioner continued to work in the said pay scale until he learnt that Storekeepers in different departments were being given the pay band of Rs.9300-34800 with Grade Pay of Rs.4200/- and thereafter Petitioner made a representation seeking revision of his pay scale on 16.11.2016.

3. Case of the Petitioner in a nutshell is that there is a clear discrimination within the Storekeepers in different departments of the University and therefore he should also be placed in the revised pay band of Rs.9300-34800 with Grade Pay of Rs.4200/- at par with the other Storekeepers. Ms. Ghosh, counsel appearing on behalf of the Petitioner submits that Storekeeper is a post which is part of the technical staff of the University and record would show that the post was given the pre-revised scale of Rs.1640-2900 under the 4th CPC which was revised to Rs.5500-9000 under 5th CPC and finally to Rs.9300-34800 with Grade Pay of Rs.4200/- as per the 6th CPC as per the CCS (Revised Pay) Rules, 2008. In order to support this plea, Ms. Ghosh relies upon a letter dated 16.06.1997 which reads as follows:-

“JAMIA MILLIA ISLAMIA

JAMIA NAGAR, NEW DELHI - 110 025

Registrar's Office

F.P.O.Gen-26/Vol.5(v)/R.O./(ESTT.)/97

16/6/97

The Accounts Officer

Jamia Millia Islamia

NEW DELHI-25.

SUB.:- Revision of pay scale in r/o Technical Staff

Sir,

I am directed to refer to your letter dated 10/3/97 on the subject noted above and to give below list of Technical Staff which is covered under the revision of scale of Rs. 1640-2900.

1. J.E.

2. Burser

3. *Store-keeper*
4. *Planning/Statistical Asstt.*
5. *Technical Asstt.*
6. *Cartographer*
7. *Sr. Lab. Asstt.*
8. *Sports Coach*
9. *Garden Supervisor*
10. *Library Incharge*
11. *Photographer*

The cases of Pharmacist and A.V. Operator are being examined separately and decision, in this regard shall be communicated separately.

Yours faithfully

Sd/-

17.6.97

(NIHALUDDIN SIDDIQUI)

Asstt. Registrar (Estt.)"

4. Additionally, Petitioner has also filed a tabular representation indicating the names of other Storekeepers in different departments of the University, who are in the pay band of Rs.9300-34800 with Grade Pay of Rs.4200/- and the chart is extracted hereunder, for ready reference:-

S.NO.	NAME OF THE EMPLOYEE	DEPARTMENT POSTED TO	PAY SCALE	GP	SR./JR
01	Mohd. Saïman Ashraf Chaudhry	Applied Science & Humanities	5200-20200	2800	Sr.
			9300-34800	4200	
02.	Mohd. Aslam	Bio-Science	9300-34800	4200	Sr.
03.	Faisal Ashraf	Civil Engineering	9300-34800	4200	Jr.
04.	Iqbal Hussain	Dentistry	5200-20200	2400	----
05.	Mirza Asad Baig	Engg. & Technology	9300-34800	4200	Jr.
06.	Khalid Anis	Mechanical Engg.	9300-34800	4200	Sr.
07.	S. Rais Mehdi Naqvi	University Polytechnic	9300-34800	4200	Sr.
08.	Adalat Khan	Ansari Health Centre	9300-34800	4600	Sr.

5. Learned counsel also places reliance on Resolution No. 11 of Executive Council ('EC') of the University dated 30.09.1997, which

indicates revision of pay scales of the technical staff of the University from Rs.1400-2600 to Rs.1640-2900 and the Resolution is extracted and placed below:-

“Resolution No.11:

Notional fixation of the pay in respect of UDCs/LDCs and Stenographers.

The Majlis-i-Muntazimah (Executive Council) in its meeting held on 8.1.97 revised the pay scale of following categories of staff on the recommendation of the Establishment Committee:

<u>S.No.</u>	<u>Category</u>	<u>Core Scale</u>	<u>Revised Scale</u>
1.	LDC	950-1500	1200-2040
2.	UDC/Stenographers	1200-2040	1400-2300
3.	Technical Staff	1400-2300/2600	1640-2900

The revision of pay scale in respect of above categories of staff from a uniform date i.e. 8.1.97 has created certain disparities in the fixation of pay between the old and new employees, Present demand is based on the analogy of other Central Universities like Aligarh Muslim University and Jawaharlal Nehru University who took actions to remove the anomalies by giving the benefit of revised pay scales from the date of appointment/promotion of the individual incumbents. Our Clerk-Typist, Sr. Clerks and Stenographers have been requesting for quite long time for the benefit of notional fixation of pay w.e.f., 1.1.1986 or date of appointment whichever is later, in order to remove the disparities. This will involve fixation of pay of all these employees at higher basic pay with additional increments ranging from 1 to 8 as per approved formula of fixation of pay. The Technical staff is also demanding notional revision w.e.f., 1.1.86 in the pay scale of Rs.1640-2900. In all these cases actual payment of arrears has not been demanded.

The Majlis (Council) considered and agreed in principle to accede the request in respect of LDCs, UDCs, Stenographers and Technical staff for notional fixation w.e.f., 1.1.1986 or from the date of appointment or promotion whichever is later in continuation of earlier decision of its meeting held on 8.1.1997.”

6. In view of these and other documents filed by the Petitioner and the fact that higher pay scale has been given to Storekeepers, who are identically placed according to the Petitioner, it is prayed that the Petitioner be also given the revised Pay Band of Rs.9300-34800 with Grade Pay of Rs.4200/- from 01.01.2006.

7. *Per contra*, learned counsel for the University submits that Petitioner was appointed pursuant to a public advertisement in which

it was clearly mentioned that the pay scale attached to the post of Storekeeper would be Rs.4000-6000. Even the appointment letter issued to the Petitioner on 31.01.2007 clearly indicated the said pay scale and Petitioner opted to accept the offer of appointment with open eyes and cannot seek a higher pay scale at this stage. In response to the contention of the Petitioner that revised pay scales have been granted to other similarly placed Storekeepers in different departments of the University, learned counsel draws the attention of the Court to an additional affidavit dated 10.03.2023, wherein details of the revised pay scales granted to the said employees have been furnished along with the reasons thereof and it is submitted by the counsel that the pay scales have been granted to those employees for reasons special and peculiar to them and not as a matter of course. The details mentioned in a tabular form are as follows:-

Sl. No.	Name	Date of initial appointment & pay-scale	Rationalization, if any	Further Revision, if any	Financial upgradation granted/adjusted against revision
1.	Adalat Khan	01.10.1990 Rs.1200-2040 (GP Rs.2400)	Rs.1400-2300 (GP Rs.2800) Vide Order dtd. 05.08.1994	Rs.1640-2900 (GP Rs.4200) EC Resolution No.11 dated 30.09.1997	Rs.5500-9000 w.e.f. 01.10.2002 (Adjusted) (GP Rs.4200) Granted GP Rs.4600 w.e.f. 01.10.2022 Retd on 30.06.2022
2.	Faizur Rahman	25.01.1990 Rs.1400-2300 (GP Rs.2800)	--	Rs.1640-2900 (GP Rs.4200) EC Resolution No.11 dated 30.09.1997	Rs.5500-9000 w.e.f. 25.01.2002 (Adjusted) (GP Rs.4200) Granted GP Rs.4600 w.e.f. 01.10.2010 Retd on 30.04.2016
3.	S.M. Shakeel Khan	29.01.1990 Rs.1400-2300	--	Rs.1640-2900 (GP	Rs.5500-9000 w.e.f. 29.01.2002 (Adjusted)

		(GP Rs.2800)		Rs.4200) EC Resolution No.11 dated 30.09.1997	(GP Rs.4200) Retd on 31.10.2006
4.	Mr. Saidul Islam	17.07.1991 Rs.1400-2300 (GP Rs.2800)	--	Rs.1640- 2900 EC Resolution No.11 dated 30.09.1997	Rs.5500-9000 w.e.f. 25.01.2002 (Adjusted) (GP Rs.4200) Granted GP Rs.4600 w.e.f. 17.07.2011 Retd on 31.03.2013
5.	S. Rais Mehdi Naqvi	15.03.1993 Rs.1200-2040 (GP Rs.2400)	Rs.1400-2300 (GP Rs.2800) Vide Order dtd. 05.08.1994	Rs.1640- 2900 (GP Rs.4200) EC Resolution No.11 dated 30.09.1997	Rs.5500-9000 w.e.f. 15.03.2005 (Adjusted) (GP Rs.4200) Granted GP Rs.4600 w.e.f. 05.08.2014 Retd on 31.07.2021
6.	Mohammad Aslam	15.03.1993 Rs.1200-2040 (GP Rs.2400)	Rs.1400-2300 (GP Rs.2800) Vide Order dtd. 05.08.1994	Rs.1640- 2900 (GP Rs.4200) EC Resolution No.11 dated 30.09.1997	Rs.5500-9000 w.e.f. 15.03.2005 (Adjusted) (GP Rs.4200) Granted GP Rs.4600 w.e.f. 05.08.2014 Current Status: Still Working
7.	Khalid Anis	16.03.1990 Rs.1400-2300 (GP Rs.2800)	--	Rs.1640- 2900 (GP Rs.4200) EC Resolution No.11 dated 30.09.1997	Rs.5500-9000 w.e.f. 16.03.2002 (Adjusted) (GP Rs.4200) Granted GP Rs.4600 w.e.f. 05.08.2014 Retd on 31.03.2021
8.	Ghalib Husain	07.07.1994 Rs.1400-2300 (GP Rs.2800)	--	Rs.1640- 2900 (GP Rs.4200)	Rs.5500-9000 w.e.f. 07.07.2006 (Adjusted) (GP Rs.4200)

				EC Resolution No.11 dated 30.09.1997	Retd on 31.03.2015
9.	Md. Salman Ashraf Chaudhary	25.02.2002 Rs.4500-7000 (GP Rs.2800)	--	--	Granted GP Rs.4200 w.e.f. 25.02.2012
10.	Mirza Asad Baig	04.07.2008 Rs.5000-8000 (GP Rs.4200)	--	--	Granted GP Rs.4600 w.e.f. 04.07.2008 It is covered by the judgement of Hon'ble High Court in LPA 359/2012 dtd. 18.05.2012 whereby the Court suspended the operation of corrigendum dated 26.04.2012 providing higher Grade pay of Rs.9300-34800 as an inadvertent mistake. Further, representation was given to Mirza Asad Baig vide office Memorandum dated 25.06.2012.
11.	Faisal Ashraf	26.09.2013 Rs.9300-34800 (GP Rs.4200) Appointed against Advertisement of PB 9300-34800	--	Office-Order dated 25.06.2012 issued as show-cause notice to Store-keeper Faisal Ashraf for rectifying PB from Rs.9300-34800 to PB of Rs.5200-20200. Faisal Ashraf	Office Memo dated 03.03.2023 by the Registrar for consideration of the representation made by Faisal Ashraf and the Competent Authority decided on sympathetic grounds approved the higher pay-scale of Rs. 9300-34800 as a personal pay-scale and the same will be adjusted against the Financial Upgradation.

Signature Not Verified

Signed By: KAMAL KUMAR W.P.(C) 1213/2017

Signing Date: 20.06.2023
22:07:18

				submitted representati on vide letter dated 02.02.2015 to continue in the PB of Rs. 9300- 34800	
12.	Ubaidur Rahman	06.06.2018 Rs.5200-20200 GP Rs.2800	--	--	No upgradation, MACP granted to them.
13.	Manoj Kumar	06.06.2018 Rs.5200-20200 GP Rs.2800	--	--	No upgradation, MACP granted to them.
14.	Iqbal Hussain	05.02.2007 (A.N.) Rs.4000-6000 (GP Rs.2400)	--	--	Granted GP of Rs.2800 w.e.f. 06.02.2017 Retd. 31.10.2019

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

9. It is true that when the Petitioner was appointed as a Storekeeper with the University he was granted the pay scale of Rs.4000-6000 in terms of the offer of appointment, which was duly accepted by him. However, the Petitioner has taken a categorical stand in the writ petition that the pre-revised pay scale of the Storekeepers in the University was Rs.1640-2900 and this is reflected from the letter issued by the University on 16.06.1997, which is extracted in the earlier part of the judgment. Even the Resolution dated 30.09.1997 placed on record by the Petitioner indicates that the pay scale of the technical staff was revised to Rs.1640-2900 and the Resolution is on record. Petitioner has pointedly averred and also placed on record names of several other Storekeepers *albeit* in different departments of the University, who were given the revised pay band of Rs.9300-34800 with Grade Pay of Rs.4200/-. This position is not denied by the University and instead an attempt was made to justify the higher Pay

Band to those employees, which is evident from the table extracted above. A bare perusal of the table and the reasons for justification, however, shows that against most of the names either there is no reasoning or it is only stated that on consideration of the representation by the employee, the higher pay scale has been continued on sympathetic considerations. This stand of the University is very strange inasmuch as pay scales are not a matter of sympathy and are statutorily fixed for a post in accordance with the Pay Commission's recommendations as incorporated in the CCS (Revised Pay) Rules, from time to time.

10. Be that as it may, there is absolutely no clarity on the stand of the University with respect to the pay scale of a Storekeeper and the Petitioner on the other hand has placed on record plethora of documents authored by the University which *prima facie* show that Storekeeper which is a part of the technical staff has always been placed in the pay scale of Rs.1640-2900 (pre-revised). It needs no emphasis that pre-revised scale of Rs.1640-2900 under the 4th CPC was revised to Rs.5500-9000 under 5th CPC and was placed in the Pay Band Rs.9300-34800 with Grade Pay of Rs.4200/- under the 6th CPC. Pay of several other employees, as brought forth by the Petitioner, has been in the revised pay band of Rs.9300-34800 with Grade Pay of Rs.4200/- and nothing has been brought out by the University to show how those Storekeepers are any different from the Petitioner.

11. Therefore, in my view, it would be appropriate at this stage, looking at the documents placed on record by the Petitioner, that the matter is remanded back to the University for re-consideration of the pay-scale of the Petitioner. University shall treat the present writ petition as a representation and pass a reasoned and speaking order taking into consideration the averments made therein and other pleadings and the documents annexed to the writ petition/affidavits of

the University, especially the following documents:-

- (i) Letter dated 16.06.1997;
- (ii) Office Order dated 03.11.1997; and
- (iii) EC Resolution dated 30.09.1997.

12. The order shall be passed within eight weeks from today and shall be communicated to the Petitioner within one week from the date of decision. Petitioner is at liberty to take recourse to legal remedies in case of any surviving grievance after the speaking order is communicated. Needless to state if the Petitioner is held entitled to the benefit of the higher scale, requisite steps shall be taken to refix his pay and grant arrears thereof as expeditiously as possible.

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

JYOTI SINGH, J

MAY 24, 2023/KA/shivam