



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

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Reserved on: July 02, 2024

Pronounced on: July 18, 2024

+ LPA 576/2023 & CM APPL. 39929/2023

JAMIA MILLIA ISLAMIA

..... Appellant

Through: Mr. Pritish Sabharwal, Standing
Counsel with Ms. Shweta Singh,
Advocate

Versus

SHAKEEL AHMAD

.....Respondent

Through: Mr. Rajat Aneja, Mr. Aditya Sharma
& Ms. Natasha Aggarwal, Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

JUDGMENT

SURESH KUMAR KAIT, J

1. The appellant-Jamia Millia Islamia ('University') has preferred the present appeal against the judgment dated 10.07.2023 passed by the learned Single Judge of this Court in W.P.(C) 8957/2020 whereby the petition filed by the respondent was allowed and the Office Order dated 04.09.2018 passed by the appellant was quashed. A direction has also been issued to the appellant to reinstate the respondent in service, thereby permitting to take his reinstatement at the age of 65 years, with 50% back wages for the period commencing 31.12.2019 till re-instatement, with other consequential benefits.



2. In the present appeal, the appellant-University has averred that the respondent was appointed as Research Assistant in the Department of Sociology *w.e.f.* 26.08.1986 and was regularised on the same post on 08.02.1989. The respondent was superannuated from the said post after attaining the age of 60 years as on 31.12.1999.

3. The appellant-University claims to be governed by its own Act, Statutes, Ordinances and Rules issued from time to time and notified by University Grants Commission ('UGC') in consonance with the decisions taken by Department of Education, Ministry of Human Resource Development, Government of India ('MHRD'). According to appellant-University, the respondent, who was appointed on a sanctioned post by UGC; any decision with regard to his retirement age cannot be in contravention with the guidelines/requirements issued by the UGC in this regard.

4. The appellant has averred that in terms of Letter dated 1-32/2006-U II dated 31.12.2008 provided by the Ministry of Human Resource and Development (MHRD) to UGC, there shall be only three designations in respect of Teachers in University, namely, Assistant Professors, Associate Professors and Professors. Furthermore, MHRD vide its letter dated 31.12.2008 bearing F no. 1-32/2006-UII/U.I(1) communicated to the Secretary, UGC that in Clause (f) in the category titled "other terms and conditions" in respect of age of superannuation, vide Letter F.No.1-19/2006-U.II dated 23.03.2007 the age of superannuation of Teachers was already enhanced to 65 years. According to the appellant, the Executive Council (*Majlis*) vide its letter dated EC-1009 Resolution No. 8, has already adopted the aforesaid provision and authorized the Vice Chancellor of the University



to implement the approved format in University Rules.

5. The appellant- University, in its meeting dated 30.06.2021 by its EC-2021: Resolution -12, received the clarification, regarding the writ petition, from the UGC vide its letter No. F.25-9/2020 (CU) dated 16.03.2021, which reads as under :-

“As per UGC Regulation 2018, the age of retirement at 65 years is only for the Teachers. Therefore, the retirement age of 65 years cannot be extended for the post of Research Assistant as it is not equivalent to Teachers”

6. According to the appellant, the Executive Council of the University has approved to fix the age of superannuation for the position of Research Assistant working in different departments of the University at 60 years vide notification dated 05.08.2021 in terms of aforesaid clarification rendered by the UGC.

7. According to the appellant, the position of the Research Assistant was offered to the respondent subject to terms and conditions specified in the appointment letter dated 20.08.1986 wherein it is mentioned that his appointment was purely temporary and his service would be governed by the rules, regulations and bye-laws of the appellant-University, as amended from time to time.

8. The respondent before the learned Single Judge raised the contention that he falls in the category of Teachers for the purpose of age of superannuation and pay scale. The respondent claimed that he was assigned the duties of classroom Teachers (UG-PG), course designing, setting question papers (UG-PG), evaluation of answer scripts, supervision of participatory research projects for MA and BA (Hons), Sociology Students



and other duties, which are assigned to Teachers only and thus, appellant's Office Order dated 04.09.2018, fixing his retirement age as 31.12.2019 i.e. age of 60 years, is illegal as the same ought to have been 65 years in terms of Notification dated 09.11.2017 issued by the appellant-University.

9. On the other hand, the appellant-University before the learned Single Judge claims to have relied upon various communications of MHRD to UGC vide letter dated 23.03.2007 wherein the age of superannuation was enhanced from 62 to 65 years for 'teaching' positions only. Also relied upon various amendments in the regulations of the University; letter dated 31.12.2008 by MHRD to UGC and also Resolution No. 8 of appellant to submit that there shall be three designations in respect of Teachers in Universities and Colleges i.e. Assistant Professors, Associate Professors and Professors.

10. Based upon the pleadings of both the sides, the learned Single Judge while allowing the petition preferred by the respondent, observed as under:

"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.”

11. During the course of hearing, learned counsel appearing on behalf of the appellant submitted that learned Single Judge did not appreciate that the regulation dated 31.07.1992 passed by the appellant-University wherein the conditions of the services in respect of Teachers of the University have been mentioned, which stipulates that the conditions of service of Teachers appointed under the University shall be the one included in the agreement of service which a Teacher is required to sign at the time of joining the University. It was submitted that no such agreement was ever entered by the appellant-University with the respondent, who was appointed as Research Assistant. Learned counsel submitted that the position of Research Assistant cannot be placed at par with that of a ‘Teacher’ and various notifications and communications taken by the Executive Council of the University, on the basis of clarifications issued by UGC and Ministry of MHRD, the Teachers would only include Professors, Associate Professors and Assistant Professors.

12. Learned counsel submitted that Regulation XI dated 21.07.1992 was never published in the official gazette. However, there are ordinances and decisions taken by the Executive Council of appellant-University, which clearly denote the definition of a Teacher. It was submitted that the appellant university in Ordinance VI titled as “Terms and Conditions of Service of Jamia Employees (other than Teachers, Registrar and Finance officer)” vide its notification dated 09.11.2017 has clearly specified the age of retirement of its employees as 60 years or as notified by the UGC and endorsed by the



Majlis-I-Muntazimah (Executive Council) from time to time. It is submitted that also an employee may retire earlier on declaration by the medical board appointed by the Executive Council being unfit or on the imposition of penalty of compulsory retirement. Therefore, the case of the respondent has to be governed by the present ordinance and he cannot seek any benefit at par as that of a Teacher.

13. During the course of hearing, learned counsel for the appellant drew attention of this Court to the provisions of Section 2(n) of the University Act and Ordinance 5(V) Leave Rules, 2021 which define Teachers as Professors, Associate Professors and any such persons as may be appointed as designated Teachers.

14. Learned counsel also submitted that reliance has been placed by respondent upon various timetables to show that he was working as a Teacher, however, he was involved only in the research process with regard to the methods of data collection, data analysis pertaining to BA Hon of Semester 2. Having been appointed as a Research Assistant, the respondent is bound to perform these duties which were related to Research Assistant. With regard to claim of the respondent that he had been an 'Invigilator', learned counsel submitted that various other employees of the University, who are not 'Teachers' are assigned such nature of duties which are not limited to invigilation of examination. On the aspect of grant of leave by the appellant-University, the contention of the appellant is that such leave was granted against respondent's designation and he was never designated as a Teacher.

15. Learned counsel for the appellant also submitted that UGC has issued Minimum Qualifications for Appointment of Teachers and other Academic



Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education Regulations, 2018 dated 18.07.2018 which categorically state that *Teachers such as Assistant Professor, Associate Professor, Professor and Senior Professor only*, which has been adopted by the appellant-University vide its notification dated 18.07.2018.

16. It was submitted that learned Single Judge has erroneously relied upon decision of this Court in ***S. Dildar Haider Vs. Jamia Milia Islamia and Ors.***, MANU/DE/8920/2006 (decided on 18.08.2006 in W.P. (C) 2829/2003), to submit that the case of the respondent is distinguishable as the respondent herein was never designated as a Teacher. Thus, a prayer was made to set aside judgment dated 10.07.2023 being devoid on merits.

17. To the contrary, the stand of the respondent in the present appeal is that he has remained in service of appellant-University as a Teacher for past 32 years and in his long tenure, he was assigned duties of classroom teaching (UG-PG), course designing, setting question papers (UG and PG) evaluation of answer scripts, supervision of participatory research projects for MA and BA (Hons), and Sociology Students. Also submitted that in the attendance statement for monthly salary of appellant-University, the respondent has always been categorised as Teacher and even his earned leaves and casual leaves have been sanctioned as per entitlement of Teachers. It was submitted that the respondent was granted earned leave in lieu of duty performed during vacation in accordance with Ordinance 5(V), Section 5(i)(b) which is available to a 'Teacher' only.

18. Learned counsel further submitted that similarly situated another Research Assistant, performing similar duties as the respondent, was granted upgradation of pay in January, 1997 and respondent had written to the Vice-



Chancellor on 16.05.2001 and 26.07.2001 of the appellant-University seeking parity with him with due recommendation of the Head of the Department of Sociology and Dean, Faculty of Social Science, which remained unanswered.

19. The respondent, vide letter dated 19.02.2002, written to the Vice Chancellor had sought creation of promotional avenues and also made a representation dated 30.07.2018 seeking correction in his service record regarding teaching status, parity on pay-scale and promotional avenues.

20. Pursuant to Office Order dated 04.09.2018 in respect of respondent's age of superannuation as 31.12.2019, the respondent had made various representations and letters to the Registrar and Vice-Chancellor dated 12.10.2018, 31.10.2018, 05.11.2018 and 11.07.2019 clarifying his position and correction of his age of superannuation and even the Establishment Committee of the appellant-University in its Meeting dated 17.07.2019 recommended that the age of superannuation of respondent be treated as 65 years and also a Sub-Committee of Establishment Committee of appellant-University in its Meeting dated 04.09.2019 recommended that respondent be considered as an Assistant Professor at par with regular teaching faculty, however, no final orders were passed.

21. The respondent had thus preferred a writ petition being W.P.(C) 13058/2019 seeking quashing of Office Order dated 04.09.2018, which was disposed of by this Court vide order dated 11.12.2019 directing the Executive Council of the appellant-University to take a decision on recommendations made by its Establishment Committee on 17.07.2019 and Sub-Committee of Establishment Committee dated 04.09.2019. The appellant-University in its meeting held on 19.12.2019 constituted a



committee of five members to consider respondent's claim of being treated as a Teacher in pursuance to the Executive Council's Resolution No.2.8 A(13) dated 22.11.2019. However, no decision was taken upon such recommendations. The respondent superannuated on 31.12.2019 and Executive Council of the appellant-University vide its Meeting dated 26.06.2020 referred the case of the respondent to UGC for consideration.

22. The UGC vide Letter bearing No. F-25-9/2020 (CU) dated 19.03.2021 clarified that as per the UGC Regulations, 2018, age for superannuation has been fixed as 65 years only for Teachers, and therefore, the same cannot be extended to Research Assistant as they do not fall under such category. According to respondent, UGC had no jurisdiction to conclude that the retirement age as 65 years cannot be extended to the post of Research Assistant.

23. Lastly, learned counsel for respondent submitted that the respondent served the appellant-University for 32 years and performed the tasks assigned to a "Teacher" and thus, the learned Single Judge has rightly vide impugned judgment set aside the impugned Office Order dated 04.09.2018 and thus, the present appeal against thereof deserves to be dismissed.

24. The arguments advanced by learned counsel for the parties were heard at length and the impugned judgment dated 10.07.2023 as well as other material placed on record has been perused by this Court.

25. The primary question for consideration by this Court is as to whether respondent, who was holding post of Research Assistant in appellant-University fall within the category of "Teachers" for the purpose of superannuation at the age of 65 years?



26. The MHRD vide its letter dated 23.03.2007 communicated the UGC in respect of enhancement of age of superannuation from 62 to 65 years for “Teachers”. The MHRD vide its letter No.1-32/2006-U II dated 31.12.2008 written to the UGC, in Clause 1 (i) of category ‘General’ mentioned that there shall be three designations in respect of teachers in Universities and Colleges, namely, Assistant Professors, Associate Professors and Professors. Also, Clause 8 of category ‘other terms and conditions’, in sub-para (f) with heading ‘age of superannuation’ mentions that in order to meet the shortage of teachers in universities, the age of superannuation has already been enhanced to 65 years and it is not disputed that the same has been adopted by the Executive Council of appellant- University.

27. The stand of appellant-University is that respondent was appointed as Research Assistant and his designation and duties performed by him does not in any manner implies to treat him as a ‘Teacher’ and so, he is not entitled to claim benefit of enhancement of age of superannuation. However, it is not disputed that respondent has been performing duties of class room teaching, course designing, settling question papers, evaluation of answer sheets etc.

28. Moreover, Section 2(n) of The Jamia Millia Islamia Act, 1988 defines ‘Teachers’ as under:-

“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;”



29. This Court in *S. Dildar Haider (Supra)* has observed as under:-

“33. The Supreme Court, in its decision reported as Osmania University vs. Muthurangam had held that in regard to parity between teaching and non-teaching staff in respect of age of superannuation, though the two categories could not be equated, yet, having regard to the statutory mandate to grant parity 'as far as possible' the University ought to prescribe the same age of retirement, in the absence of any statutory prohibition. In this case too, the notification which prescribed the age of 62 years, stipulated, by para 16.2.0 that other University employees, with superannuation age of 60 years (like teachers) and treated 'at par' with them 'in that regard' must also receive the benefit of enhanced age of retirement. The object of naming a few posts (Registrars, Librarians, etc) and extending coverage of the benefit, 'others' therefore was to be expansive the others necessarily had to be like teachers, (or Registrars/ Librarians) but could never be intended to be only teachers. If the intendment was not to grant benefit of enhanced age of retirement to employees who were at par with teachers -in that respect, like Instructor, the Jamia has not clarified as to who would fall within its sweep. Besides, the reference to 'others' has to be given meaning and content- as indeed would be case if it is held to cover instructors; any other interpretation would render the latter part of para 16.2.0 a surplusage.”

30. It is relevant to note that the Establishment Committee of appellant-University in its meeting held on 17.07.2019 considering the case of respondent observed as under:-

“The Committee has examined the matter in the light of the relevant Statute, Ordinance, Regulations as well as duties performed, duly assigned by the 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 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 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 date of attaining 60 years of age on 31.12.2019) till he attains the age of 65 years or vacates the said post on account of any reason."

31. Similar view was expressed in another meeting dated 04.09.2019 by the Sub-Committee of appellant-University. Also, the Head of Department of Sociology of appellant-University, vide communication dated 05.08.2009 acknowledged the role of respondent as a Teacher.

32. Further, the Allotment Committee of appellant-University, in its meeting held on meeting held on 20.07.1992, has allotted him quarter considering him in the category of "Teacher" while observing as under:-

"The name of Janab Shakeel Ahmed 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."



33. It is relevant to note here that respondent is possessed with necessary educational qualifications of B.Sc. (Biology), B.Ed., M.A. and thus fulfils the requisite condition of being appointed as a “Teacher”.

34. In our considered opinion, the learned Single Judge after considering the provision of Section 2(n) of 1988 Act and Regulation XI and Ordinance 5(V) with regard to sanctioned leaves of respondent, has rightly held that respondent is covered under the definition of “Teacher” and thus entitled to retire at the age of 65 years.

35. In view of aforesaid, the present appeal against the judgment dated 10.07.2023 passed by learned Single Bench of this Court is dismissed with direction to the appellant-University to comply with the directions mentioned therein within four weeks.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 18, 2024

r/uk