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

+ **W.P.(C) 5496/2025 & CM APPL. 25056/2025**

REHAN AHMED KHAN

.....Petitioner

Through: Mr. Tarique Siddiqui, Mr. Abhishek Tanwar, Md. Bilal, Mr. Fajallu Rehman and Ms. Lakshmi, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Viplav Acharya, SPC with Ms. Laavanya Kaushik, GP.
Mr. Om Prakash, SPC with Ms. Swati Mishra, Mr. Nitish Pande, Mr. Chandresh Pratap, Mr. Amish Kumar and Mr. Sarthak Udaipuria, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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29.04.2025

1. The petitioner has filed this petition under Article 226 of the Constitution, for the following reliefs:

“(a) an appropriate writ, direction or order in the nature of Mandamus to respondents to consider petitioners’ past services at respondent no. 4/ Jamia Millia Islamia from the date of petitioner’s initial/ first appointment on 19.07.2002 as Lecturer (against leave vacancy) which continued without interruption till petitioner’s permanent appointment on 26.10.2005 (against the post advertised on 25.06.2002), as qualifying service for enabling him for the purpose of pensionary benefits under the Old Pension Scheme (GPF) under CCS (Pension) Rules, 1972 (now 2021) and grant the consequential pensionary benefits under CCS (Pension) Rules.

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(b) an appropriate writ, direction or order in the nature of Mandamus declaring that New Pension Scheme notified by the Govt. of India vide gazette notification F.No.S/7/2003-ECB&PR dated 22.12.2003 for 'new entrants' to Central Govt. service from 01.01.2004 (except to Armed Forces in the first stage) is not binding on the employees in service prior to 01.01.2004 and as such not binding on the petitioner.

(c) Pass such other order as may be deemed just and proper in the facts and circumstances of the case.”

2. It is evident from the writ petition itself that the petitioner had earlier approached this Court for the same relief in W.P.(C) 1964/2015. That petition was dismissed by a judgment dated 03.03.2015, holding as follows:

“1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner, whose technical resignation on 27.5.2011 was accepted by the respondent no.1, **seeks the relief that he should be granted pension under the Old Pension Scheme instead of the New Pension Scheme.**

2. The facts of the case are that the petitioner was appointed originally with the respondent no.1/Jamia Milia Islamia Central University vide appointment letter dated 16.7.2002 only on a purely temporary appointment against the leave vacancy of one Dr. Shamshad Ahmad Naginvi. Petitioner after serving in the temporary position, was subsequently appointed on probation w.e.f 27.10.2005 and thereafter confirmed to his post w.e.f 27.10.2006.

3. **Admittedly, when the petitioner was appointed on probation in 2005 and then confirmed in 2006, it was the New Pension Scheme which was prevalent and not the Old Pension Scheme.** New Pension Scheme became applicable w.e.f 1.1.2004 and all employees who were appointed after 1.1.2004 were to be governed by the New Pension Scheme.

4. **The appointment of the petitioner on a purely temporary basis in 2002, does not give any benefits except in terms of the temporary appointment letter** and any service benefit which the petitioner claims is only such which can only be available to him after he was regularly appointed to the post and when the petitioner was confirmed as a lecturer w.e.f 27.10.2006 the Old Pension Scheme was no longer extant.

5. Contention of the counsel for the petitioner placing reliance upon para 13 of the temporary appointment letter dated 16.7.2002 that the

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petitioner will be governed by GPF-cum-pension-cum-gratuity scheme is misplaced because this clause has to be read alongwith the other clauses of this appointment letter and para 1 of which makes it clear that the appointment is purely on temporary basis. Even the earlier part of the letter makes it clear that petitioner was appointed against the leave vacancy of Dr. Shamshad Ahmad Naginvi. Since it is an undisputed position on record that it is not as if the petitioner was confirmed on the post to which he was appointed vide letter dated 16.7.2002, and therefore, petitioner's appointment on 16.7.2002 not being on a regular basis with the respondent no.1-University, the service benefits of regular appointment will only flow to the petitioner after his confirmation in 2006, and when admittedly not the old but the New Pension Scheme was applicable as from 1.1.2004.

6. Dismissed."

[Emphasis supplied.]

3. It is clear that in the present writ petition, the petitioner seeks the very same relief that was declined by this Court in the judgment dated 03.03.2015. In fact, the petitioner's first prayer in the writ petition is for consideration of his past service from 19.07.2002, which was against a leave vacancy, was noticed and specifically declined in paragraph 2 of the said judgment.

4. Mr. Tarique Siddiqui, learned counsel for the petitioner, submits that in the earlier case, the Court did not consider the interpretation of the term, "*new entrants*" to Central Government services, in the Gazette Notification dated 22.12.2003 issued by the Ministry of Finance, Government of India. He also submits that the judgment dated 03.03.2015 has been distinguished in the judgment of this Court dated 19.05.2023 in *Dr. Ravindra Narayan Mishra v. Sri Guru Tegh Bahadur Khalsa College and Ors.* [W.P.(C) 2060/2019 and connected matters], on the ground that the interpretation of the said expression was neither urged nor adjudicated by the Court earlier.

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5. I am of the view that these submissions cannot permit the petitioner to reopen or circumvent the judgment rendered in his own case for the identical relief. The contentions in terms of the said Gazette Notification were available to the petitioner at that time of the earlier proceedings, and he had the liberty to raise them before the Court. A litigant cannot agitate the same relief repeatedly, on the ground that a particular argument was not raised in the earlier round of proceedings. Having accepted the judgment dated 03.03.2015, the question of entitlement to the benefits under the Old Pension Scheme has attained finality, at least insofar as the petitioner is concerned.

6. I am, therefore, unable to come to the assistance of the petitioner in this writ petition, which is accordingly dismissed. Pending application also stands dismissed.

PRATEEK JALAN, J

APRIL 29, 2025
SS/SD/

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