



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 4963 OF 2024

(Arising out of Special Leave Petition (C) No. 8333 of 2023)

MEHER FATIMA HUSSAIN

...APPELLANT

VERSUS

JAMIA MILIA ISLAMIA & ORS.

...RESPONDENTS

WITH

CIVIL APPEAL NO. 4964 OF 2024 @ SLP(C) NO. 8416 of 2023

CIVIL APPEAL NO. 4965 OF 2024 @ SLP(C) NO. 8775 of 2023

J U D G M E N T

ABHAY S. OKA, J.

1. Leave granted.
2. By the impugned judgment dated 11th April 2023, Letters Patent Appeals preferred by the appellants herein were dismissed.

FACTUAL ASPECTS

CASE OF SABIHA HUSSAIN

3. A few factual details must be stated to appreciate the controversy. The appellant (Sabiha Hussain), in a Civil Appeal arising out of Special Leave Petition (C) No. 8416 of 2023, was initially appointed as a Reader on probation on an *ad-hoc* basis

by Jamia Milia Islamia, a University constituted under an Act of Parliament (**for short, 'the University'**). The 1st and 2nd respondents represent the University. On 6th August 2008, she was appointed to a sanctioned post of Reader in the programme for the Study of Social Exclusion and Inclusive Policy in Dr. K.R. Narayanan Centre for Dalit and Minority Studies. The appointment was made pursuant to the advertisement dated 1st May 2008. According to the appellant's case, her appointment was made through a properly constituted Selection Committee. The said appellant was later appointed as an Associate Professor. She was appointed a professor under the Career Advancement Schemes of 2010 of the University Grants Commission (**for short, 'UGC'**), effective 6th August 2014. The 1st respondent vide order dated 23rd February 2016 gave her additional charge of the post of Director in Sarojini Naidu Centre for Women Studies (**for short, 'Sarojini Naidu Centre'**).

4. The University published an advertisement on 12th July 2016, inviting applications to the post of Professor/Director and other academic posts in the Sarojini Naidu Centre established by the 1st respondent. Some of the posts advertised were tenure posts till the XII plan of the UGC. Some of the posts were non-plan posts. She applied pursuant to the advertisement. By a letter of appointment dated 8th December 2016, she was appointed as the Professor/Director. The Executive Council of the 1st respondent confirmed her appointment in a meeting held on 10th March 2017.

5. The University addressed a letter to the UGC stating that the sanctioned posts at the Sarojini Naidu Centre were advertised and have been duly filled in by following the regular selection process. A prayer was made in the said letter by the University to the UGC to merge Sarojini Naidu Centre into the regular establishment of the University. One more representation was made by the Registrar of the University to UGC, making a similar request. The UGC responded to the letters mentioned above by informing the University that if the appointments of the teachers have been made by way of a regular selection process, the same can be regularised. In a letter dated 07th June 2019, even the Teacher's Association of the University sought clarification from UGC. The clarification was whether the incumbents' services, including the appellants herein, would be confirmed or terminated. In a letter dated 25th June 2019, the UGC clarified that the teachers appointed through the proper selection procedure and who are duly qualified shall stand merged under the regular establishment budget of the University.

6. By a letter dated 26th June 2019, the appellant sought confirmation of service by addressing a letter to the University. After that, the first respondent issued a show cause notice to her for misconduct. On 1st July 2019 the appellant was replaced by another professor as the Director of Sarojini Naidu Centre. The appellant replied to the show cause notice. The appellant filed a Writ Petition challenging her abrupt removal from the post of Director and the decision not to regularise her appointment. On 21st August 2019, the learned Single Judge

of the High Court directed the reinstatement of the appellant to the post of Professor/Director of Sarojini Naidu Centre. This was done by way of an interim order. On 1st April 2020, the University stopped the functioning of the Sarojini Naidu Centre. After that, the first respondent advertised the post held by the appellant. In the Writ Petition, the UGC filed an affidavit stating that it had given “in-principle approval” to the University to regularise the appointees of Sarojini Naidu Centre, including the appellant. However, by judgment and order dated 18th August 2021, the learned Single Judge dismissed the Writ Petition on the ground that the appointment of the appellant was purely temporary. Being aggrieved by the said order, the appellant preferred a Letters Patent Appeal. In the Letters Patent Appeal, the High Court granted an interim order of stay of the advertisement. Several interim orders were passed in the appeal. On 11th April 2023, the High Court passed the impugned judgment, dismissing the appeal preferred by the appellant.

CASE OF MEHER FATIMA HUSSAIN

7. Now, coming to the facts of the Civil Appeal arising out of Special Leave Petition (C) No. 8333 of 2023, the appellant (Meher Fatima Hussain) was appointed to the post of Lecturer on probation in the said University with effect from 6th August 2008. Subsequently, by the order dated 29th April 2010, the University converted the post from a probationary post to a temporary post. As in the case of the other appellant (Sabiha Hussain), the initial appointment of the appellant was in Dr. K.R. Narayanan Centre for Dalit and Minority Studies. The

appellant received the upgradation benefit of the Career Advancement Scheme of the UGC. According to the advertisement published on 10th August 2016 for filling in academic posts in Sarojini Naidu Centre, the appellant applied for the post of Associate Professor. On 5th December 2016, the University issued a letter offering an appointment to the appellant. She was offered the post of Associate Professor (tenure Post till XII plan period or till the scheme lasts) in the Sarojini Naidu Centre. The appellant was appointed with effect from 8th December 2016. The steps taken by the University to seek approval from the UGC for the merger of the posts in Sarojini Naidu Centre into regular establishment have already been set out earlier. On 28th June 2019, a show cause notice was served upon the appellant. As stated earlier, an advertisement was issued by the University inviting applications. Therefore, a Writ Petition was filed by the appellant. During the pendency of the petition, the UGC issued a public notice continuing the UGC Women Studies Scheme till 31st March 2021. The learned Single Judge dismissed the Writ Petition on 18th August 2021. Being aggrieved by the judgment of the Single Judge, the appellant preferred Letters Patent Appeal before the Division Bench, which has been dismissed by the impugned judgment.

CASE OF SURAIYA TABASSUM

8. Now, coming to the facts of the civil appeal arising out of Special Leave Petition (C) No. 8775 of 2023, the appellant (Suraiya Tabassum) was appointed as the Assistant Professor (tenure post till XII Plan period or till the scheme lasts) in the

Sarojini Naidu Centre pursuant to the advertisement dated 12th July 2016. The letter of appointment was issued on 8th December 2016. The facts are more or less similar to those of the civil appeal arising out of Special Leave Petition (C) No. 8333 of 2023.

SUBMISSIONS

9. Detailed submissions were made by the learned counsel appearing for the parties. Firstly, we will refer to the submissions made in the Civil Appeal arising from Special Leave Petition (C) No. 8416 of 2023. At the outset, the learned senior counsel appearing for the appellant submitted that the Division Bench had taken an erroneous view of the matter by applying the law laid down by this Court in the case of ***State of Karnataka v. Uma Devi***¹. The submission of the learned counsel is that the High Court proceeded on an erroneous footing that the appellant's appointment was irregular. The submission is that in the present case, the University had conducted the appointment process as per the provisions of the relevant University Statute. Learned counsel relied upon various decisions which explain the earlier decision in the case of ***Uma Devi***¹. He relied upon decisions in the cases of ***State of Rajasthan & Ors v. Daya Lal & Ors.***² and ***Asma Shaw v. Islamia College of Science & Commerce, Srinagar Kashmir & Ors.***³ Learned counsel pointed out that the appellant has been a regular teaching staff member since 2008,

¹ (2006) 4 SCC 1

² (2011) 2 SCC 429

³ 2023 SCC OnLine SC 943

when she joined as an Associate Professor. Thereafter, she was promoted to the post of Professor and appointed Honorary Director of Sarojini Naidu Centre in February 2016. In addition, she held the post of Director at the Centre for Social Exclusion and Inclusive Policy (CSEIP). Based on the advertisement dated 12th July 2016, the appellant applied for the post of Professor/Director in Sarojini Naidu Centre. After applying Statute 25, framed under the Jamia Milia Act, 1988, the entire selection process was completed, and the appellant met the necessary criteria. She was shortlisted for an interview by the Selection Committee. Learned counsel pointed out that though she was a member of the Selection Committee by virtue of being the Honorary Director at Sarojini Naidu Centre, she did not participate in the meeting. The University issued a letter of appointment on 8th December 2016 to the appellant, appointing her as Professor/Director of Sarojini Naidu Centre. The submission of the learned counsel is that she was appointed after following the due process.

10. Inviting our attention to a letter dated 18th April 2019 sent by the UGC, learned counsel submitted that the UGC was of the view that if the appointments have been made by way of a regular selection process, the same shall be regularized. Learned counsel submitted that it is an admitted position that the appellant has been working on a sanctioned post and was selected after following due process of law. He, therefore, urged that the view taken by the High Court is completely erroneous.

11. The learned senior counsel appearing for the appellant in the civil appeal arising out of Special Leave Petition (C) No.

8775 of 2023 urged that after following due process of law, the appellant was appointed as an Assistant Professor on 8th December 2016 in the Sarojini Naidu Centre. Learned counsel submitted that as per the advice of the UGC, as the appointment of the appellant was made after following a regular process, after the merger of the posts in the regular establishment, the appointment of the appellant ought to have been continued.

12. Learned counsel appearing for the appellant placed heavy reliance on a decision of this Court in the case of **Somesh Thapliyal and Anr. v. Vice Chancellor, H.N.B. Garhwal University and Anr.**⁴ and, in particular, what is held in paragraph 49.

13. The submissions of the learned senior counsel appearing for the appellant in the Civil Appeal arising out of Special Leave Petition (C) No. 8333 of 2023 are similar to those made in other cases.

14. Learned Additional Solicitor General representing the University pointed out that the appointment of the three appellants with Sarojini Naidu Centre was not permanent, and as mentioned in the letters of appointment, the appointments were made on tenure post till the XII plan period or till the scheme lasts. Therefore, after UGC permitted the merger of the posts in the Sarojini Naidu Centre with the regular establishment, a fresh procedure for selection had to be carried out. The learned counsel submitted that the reliance placed by

⁴ (2021) 10 SCC 116

appellants on the decision of this Court in the case of **Asma Shaw³** is misplaced as the appellants were appointed on a tenure post specifically till the age of superannuation. He submitted that the appellants' cases are of backdoor entry, and hence, they cannot be regularised in service. Learned counsel also pointed out that show cause notice of misconduct was also issued to them, and a three-member committee headed by a retired Judge of the High Court found that there was prima facie evidence of misconduct against the appellants and recommended that a regular Disciplinary Committee may be set up to hold an enquiry. He pointed out that the same committee recommended that after the merger, a fresh procedure of the appointment process needs to be conducted. Our attention was invited to a decision of the Executive Council of the University, which accepted the recommendation of the three-member committee on both aspects.

15. Learned counsel submitted that the resolution of the Executive Council dated September 15, 2020, has not been challenged before the High Court. The learned Counsel submitted that the UGC had not issued any direction that the teachers appointed through the earlier process should be continued. The UGC has only allowed the merger of the teaching staff with the regular establishment.

16. The learned counsel appearing for UGC has reiterated the stand taken before the High Court that persons appointed through a proper selection process who were fulfilling qualifications as prescribed by the UGC regulations can be

continued after the merger with the regular establishment of the University.

OUR VIEW

17. For convenience, we are referring to the appellants by their first names, Meher, Sabiha, and Suraiya. As far as Meher is concerned, after following regular procedure, by a letter of appointment dated 6th August 2008, she was appointed to the post of Lecturer in Dr. K.R. Narayanan Centre for Dalit and Minority Studies of the said University. She was appointed on probation. The appointment letter clarifies that though she was appointed on probation, it will confer no title on her to continue on a long-term basis. On the same day, Sabiha was appointed as the Reader on probation with a similar clause that said that appointment on probation would not confer any title on her to continue on a long-term basis. She was also appointed in Dr. K.R. Narayanan Centre for Dalit and Minority Studies. As far as Suraiya is concerned, she was not appointed in 2008. We may note that in the case of Meher and Sabiha, by a resolution of the Executive Council dated 29th April 2010, their probationary appointment was converted into a temporary appointment. As far as Sabiha is concerned, by order dated 15th December 2015, her promotion was approved by the University under UGC-CAS-1998 and 2010. All three were appointed in December 2016 in the posts mentioned earlier based on the advertisement dated 12th July 2016.

18. The University published an advertisement on 12th July 2016 inviting applications for various posts. The present appellants applied for different posts under the said

advertisement. Meher was appointed by appointment order dated 8th December 2016 as an Associate Professor. Sabiha was appointed on the same day to the post of Professor/Director. Suraiya was appointed as an Associate Professor on the same day. All three appointment letters mentioned that they were appointed on tenure post till the XII Plan period or till the scheme lasted. They were appointed in the Sarojini Naidu Centre. We may note here that the appointment of all three was pursuant to the process of appointment initiated based on the advertisement dated 12th July 2016. They were selected by a regular selection committee, which recommended their appointments on 30th November 2016. The Executive Council of the University approved the appointments.

19. As far as Sabiha is concerned, there is one fact which is peculiar to her. On 23rd February 2016, the University's Vice Chancellor appointed her as the Honorary Director of Sarojini Naidu Centre until further orders. The office order dated 23rd February 2016 clarifies that her assignment as the Honorary Director of Sarojini Naidu Centre will be an additional assignment in addition to her duties as a professor in Dr. K.R. Narayanan Centre for Dalit and Minority Studies. One of the grounds that the High Court held against her is that she was a member of the Selection Committee in her capacity as the Director of Sarojini Naidu Centre, and therefore, her appointment made on 08th December 2016 is illegal. However, the perusal of the minutes of the relevant meeting shows that

she never participated in the relevant Selection Committee meetings concerning her appointment.

20. Thus, it can be concluded that the appellants' appointments in December 2016 were made according to a regular selection process commenced based on an advertisement dated 12th July 2016. The selection committee conducted a regular selection process. There is no dispute that the appellants hold qualifications prescribed by the UGC for the posts on which they were appointed in December 2016.

21. On 27th April 2017, the 2nd respondent – Registrar of the University, addressed a letter to UGC. The contents of the said letters are material, which reads thus:

“.....
Sub: Transferring the faculty positions under the various Plan schemes to Non-plan (maintenance grant) of Jamia Millia Islamia – reg.

Dear Sir/Madam,

With reference to the UGC letter F No. 71/2012(W.S) dated 25th March 2012 conveying the approval for continuation of financial assistance under the scheme ***‘Development of Women Studies in India Universities and Colleges – Continuation of Women’s Studies Centres in the XII Plan’*** (copy enclosed) and to inform that all the teaching as well as non-teaching plan positions (except three posts of Research Associate) sanctioned for the Sarojini Naidu Centre for Women’s Studies, J.M.1 has been filled by the University through proper Selection Committees.

In view of the above, it is requested that the expenditure to be incurred on the salary of faculty positions sanctioned under the aforesaid scheme may be merged into the Non-plan (maintenance grant) of Jamia Millia Islamia.

Thanking you.

Yours sincerely

Sd/-

**(A.P. Siddiqui) IPS
Registrar”**

(underline supplied)

In the Annexure to the said letter, the names of the three appellants were mentioned as persons working in the teaching positions at Sarojini Naidu Centre. Thus, the University admitted that the appellants were appointed to the respective posts by the University through a proper selection process. The present appellants were appointed to the teaching posts in Sarojini Naidu Centre. The appellants, along with other teachers, also made a representation to the Vice Chancellor for their continuation after the merger.

22. On 18th April 2019, the UGC informed the University that the merger of all teaching positions into the regular establishment of the University has been approved. The material part of the said letter reads thus:

“The Registrar.
Jamia Millia Islamia
Maulana Mohammed Ali Jauhar Marg,
New Delhi-110025

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

Sir,

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

.....
.....”
(underline supplied)

Thus, the UGC permitted the University to merge the teaching posts in Sarojini Naidu Centre into its regular establishment.

23. On 2nd May 2019, the Executive Council of the University passed a resolution approving the merger of teaching posts of Sarojini Naidu Centre into the regular establishment of the University. It was resolved that these posts be filled in through a proper selection committee after publishing an advertisement. Against the said decision to conduct a fresh process of appointment, the teachers made a representation to the University as well as to the UGC. By letter dated 25th June 2019, the UGC communicated to the Registrar of the University as under:

“.....
25th June, 2019

The Registrar
Jamia Millia Islamia
Maulana Mohammed Ali Jauhar Marg
New Delhi-110025

Sub: Merger of teaching posts sanctioned by UGC under Centre for Women’s studies into regular establishment budget of the University-regarding.

Sir,

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

(underline supplied)

Thus, UGC specifically informed the University that the teachers appointed through a proper selection process, who fulfilled the educational and other qualifications prescribed by UGC and whose appointments were approved by the Statutory bodies, can be merged with the regular establishment of the University. Thus, in so many words UGC permitted the University to treat the appellants and similarly situated employees as regularly appointed and merge their posts with the regular establishment budget of the University. The University is capitalising on the word “may” used in the said letter to contend that it was not mandatory for the University to continue the appellants and similarly situated teachers.

24. In the counter filed by the UGC before the High Court, the UGC reiterated what was stated in its letters dated 18th

April 2019 and 25th June 2019, which we have quoted above. Even in the written submissions filed before this Court, the UGC has reiterated its stand in the letter dated 25th June 2019. In paragraph 5 of the written submissions, UGC stated thus:

“5. It is submitted that Central University Bureau of UGC vide letter No.F.24-1/2015(CU) dated 25.06.2019 has clarified that **the persons appointed through proper selection procedure/committee and who are fulfilling all educational and other qualifications as prescribed in UGC Regulations at that time and whose appointments were approved by the Statutory bodies, the incumbent teaching staff may be merged under regular establishment budget of the Jamia Millia Islamia.”**

(emphasis added)

25. As far as the role of the UGC is concerned, in paragraph 27 of the decision of this Court in the case of ***Kalyani Mathivanan v. K.V. Jeyaraj and others***,⁵ this Court held thus:

“27. From the aforesaid provisions, we find that the University Grants Commission has been established for the determination of standard of universities, promotion and coordination of university education, for the determination and maintenance of standards of teaching, examination and research in universities, for defining the qualifications regarding the

⁵ (2015) 6 SCC 363

teaching staff of the university, maintenance of standards, etc. For the purpose of performing its functions under the UGC Act (*see Section 12*) like defining the qualifications and standard that should ordinarily be required of any person to be appointed in the universities [*see Sections 26(1)(e) & (g)*] UGC is empowered to frame regulations. It is only when both the Houses of Parliament approve the regulation, the same can be given effect to. Thus, we hold that the UGC Regulations though a subordinate legislation has binding effect on the universities to which it applies; and consequence of failure of the university to comply with the recommendations of the Commission, UGC may withhold the grants to the university made out of the fund of the Commission (*see Section 14*).”

26. This Court has highlighted the importance of the position of UGC. It is true that the letter dated 25th June 2019 addressed by the UGC has used the word ‘may’. However, considering the statutory position of the UGC, there was no reason for the University not to follow what the UGC stated. Much capital was made of the fact that the letters of appointment mentioned that the posts were tenure posts till the XII Plan period or till the scheme lasted. We may note that nothing has been placed on record showing that the scheme expired. Moreover, the appellants should have been continued after the merger, as suggested by the UGC.

27. At this stage, we may also refer to the case of **Somesh Thapliyal⁴**. This Court was dealing with a case of appointment of teachers (Associate Professors/Assistant Professors). They

were appointed after going through the process of selection provided under the Uttar Pradesh State Universities Act, 1973.

In paragraphs 49 and 50, this Court held thus:

“49. In our considered view, once the appellants have gone through the process of selection provided under the scheme of the 1973 Act regardless of the fact whether the post is temporary or permanent in nature, at least their appointment is substantive in character and could be made permanent as and when the post is permanently sanctioned by the competent authority.

50. In the instant case, after the teaching posts in the Department of Pharmaceutical Sciences have been duly sanctioned and approved by the University Grants Commission of which a detailed reference has been made, supported by the letter sent to the University Grants Commission dated 14-8-2020 indicating the fact that the present appellants are working against the teaching posts of Associate Professor/Assistant Professor sanctioned in compliance of the norms of the AICTE/PCI and are appointed as per the requirements, qualifications and selection procedure in accordance with the 1973 Act and proposed by the University, such incumbents shall be treated to be appointed against the sanctioned posts for all practical purposes.”

(emphasis added)

28. Thus, considering that appellants were appointed after undergoing a regular selection process and they possess relevant qualifications as per the norms of UGC, they should have been continued on the posts merged with the regular

establishment of the University instead of adopting the fresh selection procedure. In the facts of this case, the University's action of not continuing them and starting a fresh selection process is unjust, arbitrary and violative of Article 14 of the Constitution of India. Therefore, the employment of the appellants will have to be continued after merger.

29. A committee appointed by the University headed by the retired High Court Judge has recommended initiating a Disciplinary Enquiry against the appellants. Notwithstanding this judgment, it will always be open for the University to proceed with the Disciplinary Enquiry subject to all just objections by the appellants.

30. While issuing notice on 24th April 2023, this Court passed the following order:

“Issue notice, returnable on 17.05.2023.

If the petitioners continue to be in service as of today, their appointment shall not be disturbed till they are replaced by the regularly appointed candidates under the selection process which is already adopted. Even if the petitioners are replaced by the regularly appointed candidates, the appointment letter of the regularly appointed candidates will state that their appointment is subject to the orders passed in the Special Leave Petition.”

In view of this order, the appointments, if any, made by the University under the subsequent advertisement dated 18th September 2020 on the posts held by the appellants were explicitly made subject to the outcome of these petitions and

therefore, the appointees, if any, on the relevant posts cannot claim any equity.

31. Therefore, by setting aside the impugned judgments, we direct the 1st and 2nd respondents to reinstate the appellants in their respective posts based on their selection in December 2016. They shall be reinstated within three months from today. Though the appellants shall be entitled to continuity in service and other consequential benefits, they will not be entitled to pay and allowances for the period for which they have not worked.

32. The appeals are accordingly allowed on the above terms with no orders as to costs. If any teachers have been appointed in the posts held by the appellants, the University shall consider whether they can be accommodated in the vacant posts, if any, in accordance with the law.

.....J.
(Abhay S. Oka)

.....J.
(Pankaj Mithal)

**New Delhi;
April 15, 2024.**