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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 8258/2023, CM APPL. 32431/2023 & CM APPL.
32432/2023
RAM NIWAS SINGH & ANR. Petitioners

Through: Mr. Arun Bhardwaj, Sr. Adv. with
Ms. Ritu Bhardwaj, Mr. Kanishk
Kharbanda, Mr. Abhishek Sharma,
Mr. Nishant Bahuguna, Advs. for P-1
and P-2

versus

JAMIA MILLIA ISLAMIA UNIVERSITY & ORS..... Respondents

Through: Mr. Pritish Sabharwal, SC with Mr.
Sanjeet Kumar, Mr. Shashank
Shekhar, Ms. Pooja Singh, Mr. S.
Pandey, for R1
Mr. Apurv Kurup, CGSC with Mr.
Gokul Sharma, GP, Mr. Rahul
Sharma, R2 to R4

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER
16.06.2023

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W.P.(C) 8258/2023 & CM APPL. 31785/2023 (Stay)

1. The present petition has been filed with the following prayer:-

- “(a) Issue a writ in the nature of Certiorari to the Respondent no.1 to quash the resolution no. EC-2014 (ii): Reso.-06 dated 23.06.2014 passed by the Executive Council of the Respondent University (Respondent No.1);*
(b) To direct the Respondent No.1 to restore the Scheduled Castes reservation in recruitment to non-teaching posts and in promotions at Jamia Millia Islamia University;
(c) Issue appropriate Writ or direction in the nature of Certiorari to quash the present advertisement vis a vis non-

teaching jobs Advt. No. 01/2023-24 (NT) Dated 29.04.2023 as it is against the mandate of section 7 of the Jamia Act and pass direction to issue fresh advertisement with the provision of reservations for SC & ST in various non-teaching jobs”

2. Mr. Arun Bhardwaj, the learned senior counsel for the petitioners submits that the Respondent University has advertised 241 non-teaching posts vide advertisement Advt. No. 01/2023-2024 (NT) dated 29.04.2023. The petitioner no. 1, a schedule caste category candidate, has applied for the post of Assistant Registrar and Section Officer. The petitioner No. 2, a schedule tribe category candidate, has applied for the post of Lower Division Clerk.

3. The grievance of the petitioners is that no reservation has been extended to SC and ST candidates by the Respondent University, which is a Central University.

4. Attention of the Court is drawn to the Resolution No. EC-2014 (II): Reso.-06 dated 23.06.2014 passed by the Executive Counsel of the Respondent University whereby it has been resolved that the Respondent University is now Minority institution and it is not bound to follow the Reservation Policy of Government of India as it is exempted under Article 30 (1) of the Constitution of India. The Resolution EC-2014 (II): Reso.-06, reads as under:

EC-2014(II): Reso.-06

Consideration for adoption of National Commission for Minority Educational Institutions judgment in Case No. 891 of 2006 (and its connected petitions) in the recruitment of teaching and non-teaching positions.

The Majlis (EC) noted that the National Commission for Minority Educational Institutions in its judgment in Case No. 891 of 2006 and its connected petitions has clearly mentioned that the Jamia Millia Islamia is a Minority Educational Institution covered under Article 30(1) of the Constitution read with Section 2 (g) of the National Commission for Minority Educational Institutions Act.

*The UGC Guidelines-2006, Para No.2 states that “In exercise of the powers vested under Section 20(1) of the University Grants Commission Act, 1956 the government hereby directs the UGC to ensure effective implementation of the reservation policy in the Central Universities and those of Institutions Deemed to be Universities receiving aid from the Public funds **except in Minority Institutions under Article 30(1) of the Constitution.**” (Annexure-V).*

Since the Jamia Millia Islamia is now Minority Institution, it is not bound to follow the Reservation Policy of Govt. of India as it is exempted under Article 30(1) of the Constitution.

It is also informed that the Jamia Millia Islamia vide its Executive Council’s Resolution No. EC-2011 (IV): Reso.07 dated 01.04.2011 has already amended the Ordinance 6 (VI) [Academic] captioned “Reservation of seats and other special provisions for admission”.

The Majlis (EC) in view of the foregoing facts, considered and approved the adoption of National Commission for Minority Educational Institutions Judgment in Case No. 891 of 2006 (and its connected petitions) in regard to recruitment/promotion of teaching and non-teaching positions as has been done in “Reservation of seats and other special provisions for admission” in the University.

5. Mr. Bhardwaj, submits that the ordinance 6 (VI) (Academic) which provides for “Reservation of seats and other special provision for admission” based on religious belief has been made applicable also to the teaching and non-teaching positions in terms of Resolution No. EC-2014 (II): Reso.-06 dated 23.06.2014.

6. He further submits that the advertisement dated 29.04.2023 and the Resolution No. EC-2014 (II): Reso.-06 is contrary to the constitutional scheme of reservation besides being contrary to the statutory scheme, in as much as, Section 7 of the Jamia Milia Islamia Act, 1988 (herein referred to as 'the Act') mandates that the Respondent University shall be open to all classes, castes and creed and it shall not be lawful for the university to adopt or impose on any person any test whatsoever of religious belief or profession to entitle him to be admitted therein as a student or staff. The provision of section 7 of the Act, reads as under:

7. University open to all classes, castes and creed.—The University shall be open to persons of either sex and of whatever race, creed, caste or class, and it shall not be lawful for the University to adopt or impose on any person any test whatsoever of religious belief or profession in order to entitle him to be admitted therein as a teacher or student, or to hold any office therein or to graduate thereat:

Provided that nothing in this section shall be deemed to prevent the University from making appropriate provisions for reservation for the Scheduled Castes, the Scheduled Tribes, the physically handicapped persons and women.

7. It appears that the matter requires consideration.
8. Issue notice. Mr. Pritish Sabharwal, learned standing counsel accepts notice on behalf of the respondents.
9. Let counter affidavit be filed within three weeks.
10. Rejoinder, if any, be filed before the next date.
11. List the matter before the Roster Bench, on 07.07.2023.
12. In the meanwhile, the Respondent University is directed to keep one post vacant for the petitioners in each category [i.e. –(i) Assistant Registrar, (ii)Section Officer and, (iii)LDC], under which they have applied.

13. It is clarified that the recruitment process, as such, has not been stayed.

**VIKAS MAHAJAN
(VACATION JUDGE)**

JUNE 16, 2023
N.S. ASWAL