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

+ **W.P.(C) 11255/2023, CM APPL. 43824/2023 & 43825/2023**

AFTAB ALAM

..... Petitioner

Through: Dr. Swaroop George, Ms. Iram
Peerzada and Mr. Mobashshir Sarwar,
Advocates

versus

JAMIA MILLIA ISLAMIA & ORS.

..... Respondents

Through: Mr. Pritish Sabharwal, Standing
Counsel, JMI

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

% **21.03.2024**

1. On the ground that the petitioner Aftab Alam took employment within two years of his registration in the Ph.D. program with the respondent Jamia Milia Islamia (JMI), the JMI has cancelled the petitioner's Ph.D. registration *vide* communication dated 15 December 2020. The petitioner seeks quashing thereof.

Facts



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2. The petitioner enrolled with the Ph.D. program in the Department of Teachers Training and Non-Formal Education of JMI on 3 August 2018.

3. On 25 February 2020, the following certificate was issued, signed by the petitioner's supervisor and by the Head of his Department:

“JAMIA MILIA ISLAMIA

**Department of Teacher Training & Non-Formal Education
(Institute of Advanced Studies in Education)
Faculty of Education**

25th February, 2020

To Whom It May Concern

It is certified that Aftab Alam, who had been registered in Ph.D. Programme in August 2018 in the Department of Teachers Training and Non-Formal Education (I.A.S.E.), Faculty of Education, Jamia Millia Islamia, New Delhi-110025. He has completed his all field work related to Ph.D.

It is ensured that he will not be engaged hereafter in the department in any way.

(Prof. Naheed Zahoor)
Supervisor

(Prof. Sara Begum)
Head

4. On 27 February 2020, the Head of the petitioner's Department issued the following communication to the Maulana Azad National Urdu University (MANUU), to whom the petitioner had applied for appointment as Assistant Professor, thus:



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“27.02.2020

The A.R.
Establishment & Recruitment Branch
Maulana Azad National Urdu University
Hyderabad

Sir,

This is with reference to the applications given by following students who have been selected as Asst. Prof. in Education and pursuing Ph.D. in our department. They have applied for converting the full time Ph.D. programme to part-time Ph.D. programme with immediate effect. It will be presented in the forthcoming (2 or 3 months) DRC/B.O.S for approval as the university has provision for in-service part time programme in such conditions. (as per Jamia ordinance reference to M.Phil./Ph.D. regulation of ordinance 9/2(i).

All the following scholars are relieved from full-time Ph.D., work with immediate effect and may be allowed to join the service.

	Name of candidates	Years of Registration
1	Md. Mousuf Raza	(Dec. 2017)
2	Mohd. Bahauddin	(Dec. 2017)
3	Aftab Alam	(Aug. 2018)
4	Ashraf Nawaz	(Sept. 2015)

With best regards

Thanking you

Yours Sincerely

(Prof. Jessy Abraham)
Head”

5. At this point, it becomes necessary to reproduce Clause 9(j) and 10(b)(vi) of Ordinance IX of the Ordinances governing the M. Phil./Ph.D. programs in the JMI, thus:

“9. **General Guidelines for Scholar**



j) No scholar shall take any employment during the first two years of registration. If scholar wishes to take up employment after two years he/she must apply, through RAC¹, to DRC²/CRC³ for conversion of status into in-service scholar.

10. Cancellation of Registration

b) The DRC/CRC shall recommend to the BoS/CoS the cancellation of the registration of a scholar on:

(vi) He/she has taken employment within two years of registration.”

6. On 28 February 2020, the MANUU appointed the petitioner as Assistant Professor-Education.

7. The DRC, in its meeting dated 19 March 2020, noted the fact that the petitioner, who had joined the MANUU, had requested to retain his Ph.D. registration as an in-service Scholar, and accepted the request in terms of Clause 2 (i) of Ordinance IX, which reads:

“i) **In-Service scholar:-** The government employees in NCR, including defence personnel and JMI employees, who wish to pursue the M.Phil./Ph.D. programme, while continuing their duties in service, shall be permitted to work as an in-service scholar but fulfilling the requirement of the admission procedure laid down in Para 2 and the requirement of course work as per Para 4.

Provided that

(i) The candidate is working in Academic/Research organisation in HEI.

¹ Research and Advisory Committee

² Departmental Research Committee

³ Centre's Research Committee



(ii) To the satisfaction of DRC/CRC that duties in his/her service permits to devote part of candidates time to research.

(iii) The facilities, in the case of experimental work, for research are available at his/her organisation.

(iv) The candidate must produce 'NOC' from his/her parent organisation at the time of interview."

8. The above decision of the DRC, taken in its minutes dated 19 March 2020, was confirmed by the BOS in its minutes dated 1 October 2020.

9. On 15 December 2020, the Assistant Registrar (A&C) wrote to the Dean, Faculty of Education, JMI, thus:

“15th December, 2020

The Dean,
Faculty of Education
Jamia Milia Islamia,
New Delhi-110035

Sub: Regarding application of Mr. Aftab Alam seeking grant of permission to continue as in-service PhD Scholar in IASE

Sir,

I am directed to refer to an application duly forwarded by you on the subject mentioned above. In this regard, it is to inform you that the request of Mr. Aftab Alam has been examined in the light of Ordinance-IX (9) (Academic) and since the applicant has taken employment within two years of his registration to Ph.D. program, his admission is liable to be cancelled.

You are, therefore, requested to take necessary steps in respect of cancellation of admission of Mr. Aftab Alam who was admitted to Ph.D. program in IASE.

This has approval of the Competent Authority of the University.



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Yours sincerely,

(Saqib Aziz)
Asst. Registrar (A&C)”

10. As a result, the impugned Notice came to be issued by the Dean of the Faculty of Education, JMI, on 17 December 2020:

“17 December 2020

NOTICE

With reference to the letter of Academic Council, Registrar Office, letter No. AC-4(17)/RO/2020 dated 15th December 2020 regarding seeking grant of permission to continue as in-service Ph.D. scholar, the competent authority has not granted permission to continue as in-service scholar as per ordinance of the Jamia page No. 61 column No. 2 Para (i) & Page No. 67 Para No. (VI).

Keeping the information of the Asstt. Registrar, Academic & Council Branch and given reference of the Jamia Ordinance in view, the registration of Mr. Aftab Alam to Ph.D. program is cancelled with immediate effect. The concerned officials/teachers may kindly note.

(Prof. Aejaaz Masih)
Dean”

11. More than a year after the decision of the DRC on 19 March 2020, which was affirmed by the BOS on 1 October 2020, the BOS, inexplicably, did a *volte face* on 28 April 2021 and, in the meeting held by the BOS on that day, took the following decision:

“(B) In-service/Part time Scholar Cancellation

The board discussed the matter pertaining to in-service part time scholars and found that some scholars have joined the service within two-years of their admission in the Ph.D. programme. They have applied for conversion to the in-service part time scholar. As per ordinance of Jamia Page No. 61 Column 2 Para (i) & Page No. 67 Para No. (VI), the board resolved to cancel the admissions of the following scholars:



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S.No.	Name	Supervisor	Date of Registration	Joining Dates Department	Department
2	Aftab Alam	Prof. Naheed Zaroor	03.08.2018	25.10.2019	MANUU"

12. Aggrieved, the petitioner approached this court by means of W.P.(C) 11213/2022 (*Aftab Alam v. Jamia Millia Islamia*). By order dated 28 July 2022, this Court disposed of the said writ petition with a direction to the Executive Council of the JMI to take a decision on the representation made by the petitioner, ventilating his grievance, if made within a period of 2 weeks, in accordance with law.

13. The petitioner, accordingly, addressed a detailed representation to the Executive Council of the JMI on 16 August 2022. The Executive Council rejected the representation in its meeting dated 22 February 2023, “as the decision taken by the University is in conformity and in accordance with the Ordinance IX (Academic) related to Ph.D. of the University.”

14. Aggrieved by this decision, the petitioner has now approached this Court, challenging the decision and seeking an appropriate writ, quashing and setting aside the cancellation of his Ph.D. program.

Rival Submissions

15. Dr. Swaroop George and Mr. Pritish Sabharwal, learned Counsel, argued for the petitioner and for the JMI, respectively.



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16. Dr. George submits that no fault, whatsoever, can be found with the petitioner, inasmuch as the appointment order dated 28 February 2020 was issued only after the Head of the petitioner's Department had issued the certificate dated 25 February 2020 and, following that, the Head of the Department had issued the communication dated 27 February 2020 to the MANUU. Dr. George submits that, in fact, the JMI was allowing a relaxation of 6 months, in the period of 2 years envisaged in Clause 9(j) in Ordinance IX of the JMI, in the case of scholars who had joined Ph.D. after completing their M.Phil. programmes. In any event, submits Dr. George the decision to convert the petitioner's full-time Ph.D. program to a part-time in-service Ph.D. program was not only endorsed by the DRC but also approved by the BOS. In fact, he points out, it was the decision of the BOS taken on 28 April 2021 which was in the teeth of Clause 10, as it was not based on any recommendation by the DRC or the CRC. Nor, he points out, were the impugned letter dated 15 December 2020, from the Assistant Registrar to the Dean and the impugned Notice dated 17 December 2020 issued by the Dean in conformity with Clause 10 of Ordinance IX of the JMI.

17. Dr. George advances, as an ancillary contention, the submission that a careful reading of Clause 10 (b) of Ordinance IX makes it apparent that the cancellation of the registration of a Ph.D. scholar, on his having taken employment within 2 years of registration, was not mandatory. The clause, he submits, clearly vests discretion in the BOS in that regard. Once the BOS had, in its meeting dated 1 October 2020, taken a decision to approve the proposal of the DRC to allow



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conversion of the Ph.D. program of the petitioner to an in-service Ph.D. program, it had exhausted its discretion in the matter, and could not revisit the decision. Dr. George submits that, in fact, it does not appear that the earlier decision of the BOS, taken on 1 October 2020, was placed before the BOS on 28 April 2021.

18. Dr. George submits that, in these circumstances, the decision to cancel the petitioners Ph.D. registration was completely illegal, and could not sustain in law.

19. Responding to Dr. George's submissions, Mr. Sabharwal, appearing for the JMI submits that Clause 9(j) of Ordinance IX was perfectly clear. There was an absolute proscription on any Ph.D. scholar taking employment within the first two years of her, or his, registration as a Ph.D. scholar. Inasmuch as the petitioner had done so, the cancellation of his registration was in accordance with the Ordinance and did not, therefore, merit interference.

20. Mr. Sabharwal also places reliance on Clause 9(g) of Ordinance IX, which reads as under:

“g) A scholar shall reside in NCR during the first two years of his/her registration. He/she may, however, be permitted by the Head/Director/Dean of the Department/Centre/Faculty concerned, on the recommendation of the RAC and the satisfaction of the DRC/CRC, to go out of station in connection with his/her research work.”

The MANUU, where the petitioner had taken up employment as Assistant Professor, submits Mr. Sabharwal, is in Hyderabad. The taking of employment outside the NCR before the expiry of two years



from the registration of the petitioner as a Ph.D. scholar also, therefore, infringed Clause 9(g) of Ordinance IX and was, therefore, additionally illegal for that reason.

21. To a query from the Bench, however, Mr. Sabharwal has submitted, very fairly, that the decision of the BOS, taken on 28 April 2021, was apparently not taken pursuant to any recommendation of the DRC or the CRC, but was taken *suo motu*.

Analysis

22. Having heard learned Counsel at length and perused the record, I am, for the foregoing reasons, of the opinion that the petitioner is entitled to succeed in this writ petition.

22.1 Firstly, Clause 9(j) of Ordinance IX does not deal with cancellation of the Ph.D. registration of a scholar. It merely proscribes a scholar from taking employment during the first two years of her/his registration. The consequence, in the event of such employment being taken within two years of the scholar's Ph.D. registration is to be found in Clause 10(b)(vi) of Ordinance IX. Properly read, cancellation of the registration of a Ph.D. Scholar is not an inexorable sequitur to the scholar taking employment within two years of joining Ph.D. Clause 10(b)(vi) envisages the DRC/CRC recommending, to the BOS/COS for cancellation of the registration of the Scholar. No doubt, the use of the word "shall" in clause 10(b) of Ordinance IX would seem to indicate that the DRC/CRC has no option in the event of a Ph.D. scholar taking employment within two years of registration



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but to recommend to the BOS/COS for cancellation of the registration. Thereafter, however, there is no statutory imperative on the BOS/COS to accept the recommendation and cancel the scholar's registration. The very fact that the Ordinance does not envisage automatic cancellation of the scholar's registration in the circumstances envisaged in the various sub-clauses of Clause 10(b), but requires the proposal to be put up by the DRC/CRC and for the BOS/COS to take a decision thereon, indicates that the Ordinance consciously vests discretion with the BOS/COS in that regard. Equally consciously, the Ordinance has not chosen to curtail the scope of the discretion in any manner, expressly or impliedly. Once the recommendation for cancellation is made by the DRC/CRC in accordance with Clause 10(b) of Ordinance IX, it is for the BOS/COS to take a decision as to whether to cancel or not to cancel the registration of the Scholar. In this regard, the Ordinance is silent. It cannot, therefore, be said that taking of employment within two years of joining the Ph.D. course had necessarily to result in the cancellation of the Ph.D. programme of the scholar concerned.

22.2 Secondly, On 25 February 2020, the Head and the Supervisor of the Departments in which the petitioner was pursuing his Ph.D. Program had provided a certificate on 25 February 2020 certifying that the petitioner had completed all field work related to Ph.D. and would not be engaged thereafter by the Department in any way. Following this, on 27 February 2020, the Head of the Petitioner's department wrote to the MANUU, specifically stating that the request of the petitioner for conversion of his Ph.D. Program from a full time



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to part time Ph.D. program as an in-service scholar had been accepted, and he was relieved from full-time Ph.D. work with immediate effect, with the specific further stipulation that he “may be allowed to join the service” in the MANUU. It was only thereafter that, on 28 February 2020 that the appointment letter was issued to the petitioner by the MANUU. Had the JMI not issued the certificate dated 25 February 2020 and addressed the subsequent communication on 27 February 2020, for aught one knows, the appointment letter dated 28 February 2020 may never have come to be issued, and, even if it were, the petitioner may never have joined the services of the MANUU on 2 March 2020. There is no reason to believe that the petitioner would still have taken employment with the JMI. In any event, the petitioner having taken employment with the JMI after permission in that regard was conveyed by the JMI to the MANUU, the taking of the employment by the petitioner could not have been used as a ground to cancel his Ph.D. It is obvious that the JMI have expressly in writing permitted the petitioner to take employment with the MANUU and thereafter used that fact as a basis to cancel the petitioner’s Ph.D. registration. It is a well settled principle that no person can be permitted to take advantage of his own wrong.

22.3 Thirdly, the cancellation of the petitioner’s Ph.D. registration has not been done in the manner envisaged by Clause 10(b) of Ordinance IX of the Ordinances of the JMI. Clause 10(b) requires the DRC/CRC to in the first instance recommend to the BOS/COS, for cancellation of the registration of the concerned scholar. It is only thereafter that the BOS/COS can take a decision in that regard. There



is no recommendation in the present case by the DRC/CRC to the BOS/COS, recommending cancellation of the petitioner's Ph.D. program. From the time of *Taylor v. Taylor*⁴ and moving, thereon, through the decision of the Privy Council in *Nazir Ahmed v. King Emperor*⁵ and a plethora of judgments of the Supreme Court including *State of U.P. v. Singhara Singh*⁶, the position in law is that where the Statute requires a particular act to be done in a particular manner, that act must be done in that manner or not done at all, all other modes of performing the act being necessarily forbidden. Inasmuch as Clause 10(b) of Ordinance IX of the Ordinances of the JMI required the decision of the BOS/COS regarding cancellation of the registration of the Ph.D. scholar to be preceded by a recommendation of DRC/CRC, and there was no recommendation by the DRC/CRC, at any stage, for cancellation of the petitioners Ph.D. registration, the cancellation stands vitiated *in toto*.

22.4 Fourthly, it is an admitted position that the decision of the BOS taken in the minutes of its meeting held on 28 April 2021 to cancel the Ph.D. registration of the petitioner, was not preceded by any recommendation of the DRC/CRC, but was taken by the BOS *suo motu*. Neither is there any provision in the Ordinances permitting the BOS to take such a *suo motu* decision regarding cancellation of the registration of a Ph.D. scholar, nor is there any provision which empowered the BOS to review or revise the decision earlier taken by

⁴ (1875) 1 Ch D 426

⁵ AIR 1936 PC 253

⁶ AIR 1964 SC 358



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it. The decision taken in the meeting of the 28 April 2021 is, therefore, vitiated as having been taken in excess of the authority and jurisdiction vested in the BOS.

22.5 Fifthly, as Dr. George points out, the minutes of the meeting of the BOS held on 28 April 2021 do not indicate that the attention of the BOS had been invited to the decision taken by it in its earlier meeting of 1 October 2020 to confirm the decision of the DRC held on 19 March 2020. This omission vitiates the decision taken in the meeting of 28 April 2021 for two reasons. Firstly, the decision has been taken without all relevant facts being placed before the BOS, which itself vitiates the decision in its entirety. Secondly, had the attention of the BOS been invited to its earlier decision taken in its meeting of 1 October 2020, there is no reason to believe that the BOS would have decided to review its earlier decision and take a decision directly opposed thereto.

22.6 Sixthly, and on the other hand, the DRC, in its meeting dated 19 March 2020, accepted the request of the petitioner to retain his Ph.D. registration as a part time Ph.D. scholar despite his having joined as an Assistant Professor in the MANUU. As such, the DRC, far from recommending cancellation of the Ph.D. registration of the petitioner, in fact recommended that he be permitted to continue as an in-service Ph.D. Scholar. This decision of the DRC was approved by the BOS in its meeting dated 1 October 2020. This approval is, quite obviously, incompatible with any subsequent decision to cancel the petitioner's Ph.D. registration.



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22.7 Apropos Mr. Sabharwal's reliance on Clause 9(g), this Court is concerned, in this case, with the correctness of the decision to cancel the petitioner's Ph.D. registration. Clause 9(g) does not form any part of consideration by any of the authorities below in any of the decisions which have been placed on record. How Clause 9(g) has to be worked out is a matter for the authorities to decide. It cannot, however, constitute an impediment to the Court taking a view on the legality of the decision to cancel the petitioner's registration. Besides, Clause 10 does not envisage inability to conform to Clause 9(g) as being one of the grounds on which the Ph.D. registration of a scholar can be cancelled.

22.8 Even otherwise, as Dr. George correctly points out Clause 9(g) contains an inbuilt proviso. There is no absolute mandate on a Ph.D. scholar requiring to be a resident of NCR during the first two years of his/her Ph.D. Registration. The Head/Director/Dean of the Department or Faculty concerned may, on the recommendation of the RAC and on the satisfaction of the DRC/CRC, permit the scholar to go to out of station in connection with his/or her research work. The Court is not expressing any opinion on whether this particular caveat applies in the present case. Nonetheless, the existence of this caveat also indicates that there is no absolute mandate on a Ph.D. scholar for being a resident of NCR for two years after his registration as a Ph.D. Scholar.

22.9 Moreover, the Head of the petitioner's Department having herself agreed to the petitioner joining employment with the MANUU



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before the expiry of two years from the registration of the petitioner as a Ph.D. scholar, the JMI cannot, quite obviously, seek to invoke clause 9(g) as a ground to justify cancellation of the petitioner's Ph.D. registration.

22.10 Nor can Clause 2(i) justify cancellation of the petitioner's Ph.D. registration. In my opinion, clause 2(i) of Ordinance IX had no application to the present case at all. That clause deals with Government employees in the NCR, or JMI employees, who wish to pursue their M. Phil./Ph.D. program while continuing to remain in service as such Government employees. The clause provides that such Government employees shall be permitted to work as in-service scholar if they fulfil the requirement of the admission procedure laid down in clause 2 and the requirement of course work in clause 4 of Ordinance IX. This clause obviously has no application to the present case or to the petitioner, as the petitioner is not a Government employee working in the NCR who seeks to pursue M. Phil./Ph.D. program as an in service scholar. The reliance by Mr. Sabharwal on clause 2(i) of Ordinance IX must, therefore, be treated as misplaced.

Conclusion

23. For all the aforesaid reasons, this Court is convinced that the decision to cancel the petitioner's Ph.D. registration as recommended by the Assistant Registrar (A&C) to the Dean, Faculty of Education, JMI by communication dated 15 December 2020 and the subsequent cancellation of the petitioner's Ph.D. registration by the Dean *vide* the



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impugned notice dated 17 December 2020 as well as the decision taken by the Executive Council in its meeting dated 22 February 2023 cannot sustain on facts or in law. The decision to cancel the petitioner's Ph.D. registration is, therefore, quashed and set aside. The petitioner shall stand restored to the position in which he was at the time when the Ph.D. registration was cancelled, with all consequential benefits.

24. The writ petition stands allowed in the aforesaid terms with no orders as to costs.

C.HARI SHANKAR, J

MARCH 21, 2024/yg

Click here to check corrigendum, if any