

(2021) 10 DEL CK 0146

In the Delhi High Court

Case No : Civil Writ Petition No. 8378 Of 2011

Moharram Ali Khan

APPELLANT

Vs

Jamia Milia Islamia & Ors

RESPONDENT

Date of Decision : 25-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 19(1)(g)

Citation : (2021) 10 DEL CK 0146

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Naginder Benipal, Harpreet Singh Hora, Prateek Sharma, Fuzail Ahmad Ayyubi, Akanksha Rai

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

1. This petition has been filed by the petitioner with the following prayers: -

"In these premises, the petitioner most respectfully pray that this Hon'ble Court may be pleased to:-

[A]. Issue a writ of mandamus or any other appropriate writ commanding the respondent by directing them to allow the petitioner to join his duty as professor in "Centre for Interdisciplinary Research in Basic Sciences" of the JMI; AND / OR

[B]. Issue a writ of mandamus or any other appropriate writ or direction declaring that the petitioner is entitled to work and join his duty as professor in "Centre for Interdisciplinary Research in Basic Sciences" of the JMI; AND OR

[C]. Issue a writ of mandamus or any other appropriate writ or direction declaring that the action of respondent in depriving the petitioner the benefit of his job is illegal and arbitrary violative of the petitioners fundamental right as enshrined under Article 19(1)(g) of the Constitution of India;

[E] Call for the record of the case and after perusal of the same pass an appropriate order or direction declaring the action of respondent as illegal and arbitrary; AND / OR

[F] Pass any appropriate order or direction as may deem fit and proper under the facts and circumstances of the case."

2. The facts as noted from the writ petition are that the petitioner joined the respondent University as Professor in Mathematics in the year 2007. While working so, he, on February 17, 2010, applied for the post of Professor in King Abdulaziz University, Saudi Arabia, for which he sought 'No Objection Certificate'/ grant of Extra Ordinary Leave ('EOL', for short) from the University. The request of the petitioner for EOL was not acceded to in terms of the letter dated August 20, 2010.

3. Mr. Naginder Benipal, learned counsel appearing for the petitioner would submit that the petitioner had met the Vice-Chancellor of the respondent University, who had observed that the request of the petitioner for EOL shall be favourably considered. According to Mr. Benipal, after completing one year of contract service in Saudi Arabia, the petitioner came back to India on August 25, 2011, and reported for duty at the University. But his request for joining was not acceded to, which resulted in the filing of the present petition.

4. Mr. Benipal would submit that the inaction on the part of the University by not allowing the petitioner to join the duties on the ground that the petitioner had resigned from the post before going to Saudi Arabia is untenable as no such order was ever communicated to the petitioner nor the petitioner has followed the process of handing over the charge to the successor.

5. On the other hand, Mr. Fuzail Ahmad Ayyubi, learned Standing Counsel for the respondent University had by drawing my attention to (Annexure P-7) letter dated September 21, 2010, submitted that the petitioner, though sought EOL alternatively expressed his desire to resign from the post of Professor (Mathematics). The said request of the petitioner was accepted by the competent authority as is seen from the notings on the letter dated September 21, 2010, of the petitioner, and pursuant thereto an office order dated September 29, 2010, was also issued accepting the request of the petitioner to resign. In fact, the petitioner voluntarily left for Saudi Arabia, despite the petitioner's request for EOL having been rejected. So, his departure Saudi Arabia is for the reason that he had tendered his resignation. Having submitted his resignation with open eyes he cannot contest the same today. He has also drawn my attention to Annexure-R(VI) to contend that the request of the petitioner for rejoining his post in the University was also rejected. Mr. Ayyubi seeks the dismissal of the writ petition.

6. Having heard the learned counsel for the parties, and perused the record the only issue which arises for consideration is whether the respondent University could have allowed the petitioner to re-join his duties as Professor (Mathematics). Initially the petitioner had applied for EOL but the same was

rejected vide order dated August 20, 2010. It is also seen that his alleged meeting with the Vice-Chancellor of the University did not bear any fruits. He being keen to join his assignment in Saudi Arabia had in the alternative made a request to resign from the post of Professor (Mathematics). It is the said request of the petitioner dated September 21, 2010, which was accepted by the competent authority, and an office order of September 29, 2010, was issued relieving the petitioner from the services of the University w.e.f. September 22, 2010. The plea of Mr. Benipal that the petitioner has not received the office order dated September 29, 2010, accepting his resignation is not tenable as the same was issued pursuant to the request of the petitioner dated September 21, 2010, and the petitioner cannot plead ignorance about the issuance of the order dated September 29, 2010, when the same was passed at his request. In any case, if the request of the petitioner for EOL was rejected, he could not have left the University for taking the assignment in Saudi Arabia. He should have at least made inquiries about his resignation, before leaving for Saudi Arabia. A resignation once accepted cannot be taken back. During the hearing, the Court had asked Mr. Benipal, the current status of the petitioner as it was noted by the Court that the petitioner is pursuing the present petition through his attorney namely Mr. S. Saqib Khan, his son. The Court was informed that the petitioner is in employment in Nigeria w.e.f. 2013. In any case, I find that petitioner has resigned which request having been accepted, he cannot be allowed to rejoin his duties. In the facts of this case, I do not see any merit in the petition. The same is dismissed.

No costs.