

# Afsar Husain vs Aligarh Muslim University And 5 Others on 1 May, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:69341

Court No. - 7

Case :- WRIT - A No. - 18681 of 2021

Petitioner :- Afsar Husain

Respondent :- Aligarh Muslim University And 5 Others

Counsel for Petitioner :- Mohammad Farooque Ansari

Counsel for Respondent :- C.S.C.,Dhananjay Awasthi,Shashank Shekhar Singh

Hon'ble Vikram D. Chauhan,J.

1. Heard learned counsel for the petitioner, learned counsel for respondent-University and learned Standing Counsel for the State.

2. The writ petition is filed with the following prayer:

"(a) issue a writ, order or direction in the nature of mandamus directing the respondents to award 2nd upward movement with effect from 01.01.1995 in the Pay Scale of Rs.2200-4000/- revised as Rs. 8000-Rs. 13500 as awarded to similarly situated persons of the University.

(b) issue a writ, order or direction in the nature of mandamus directing respondents for fixation of pay in pay scale of second upward movement with effect from 01.01.1995 and pay difference of salary and pension (in revised pay scale) within stipulated time by this Hon'ble Court."

3. Learned counsel for respondent-University has raised preliminary objection that the present writ petition is barred by delay and laches and law of acquiescence. Learned counsel for

respondent-University has placed reliance upon the judgment of this Court in Shankara Cooperative Housing Society Limited Vs. M. Prabhakar and others (2011) 5 SCC 607 and U.P. Jal Nigam and another Vs. Jaswant Singh and another (2006) 11 SCC 464 to submit that persons who have not approached the Court within reasonable period and has not explained delay then the writ petition would be barred by laches. Learned counsel for respondent-University submits that the petitioner has retired in the year 2000 from the post of Technical Assistant from the University and the present writ petition has been filed after 21 years of his retirement and as such, the present writ petition is required to be dismissed on the ground of delay and laches and law of acquiescence.

4. Learned counsel for petitioner has denied the same and submits that the writ petition is not barred by laches. Learned counsel for petitioner submits that petitioner was appointed on the post of Technical Assistant and a scheme for second upward movement was launched on 7.1.1997. The aforesaid scheme of second upward movement of pay was applicable to petitioner and as such, petitioner has applied on 21.7.1997 before respondent-University for grant of benefit of second upward movement. The aforesaid benefit of scheme was given to other employees by order dated 3.9.1997, which is at page 40 of the paper book. Since other employees were granted and petitioner was not granted, petitioner has approached the respondent-University. In the meantime, on 1.10.1997, a direction was issued by Deputy Registrar of University that all the cases pertaining to second upward movement may not be processed and be kept in abeyance till further orders. The aforesaid order dated 1.10.1997 was further clarified by order dated 15.10.1997 issued by Deputy Registrar of University that all the cases, which has already been processed and order has been passed to award second upward movement, the same may be cleared and implemented. Learned counsel for petitioner submits that the effect was that some of the employees' applications for second upward movement were already processed prior to order dated 1.10.1997 and were given the aforesaid benefit, however, petitioner's application was not processed and the same remained kept in abeyance by order dated 1.10.1997 by the respondent-University.

4-A. Learned counsel for petitioner further submits that the matter is remain pending with the respondent-University, however, petitioner has retired on 30.9.2000. Thereafter, other employees has filed a writ petition before this Court being Civil Misc. Writ Petition No.9438 of 2006 (Wajid Husain and others Vs. Vice Chancellor, Aligarh Muslim University, Aligarh and others) where the claim for second upward movement was granted to the aforesaid employees. The aforesaid judgment dated 20.8.2009 was not challenged by the respondent-University, however, application of petitioner for second upward movement remained pending and was not decided by the respondent-University and neither the same has been rejected. Learned counsel for petitioner submits that after retirement when the petitioner found that similarly placed persons have been granted second upward movement, petitioner preferred a representation dated 25.10.2018 before Registrar of University, which is at page 73 of the paper book and on the aforesaid representation, remark was made that matter is under consideration. Copy of which is filed at page 76 of the paper book. The aforesaid mark has been signed by Deputy Registrar of University.

4-B. Learned counsel for petitioner has further drawn attention of this Court to para 21 of the writ petition, which is quoted hereinbelow:

"21 That aforesaid representation of petitioner was returned in original with endorsement that matter is under consideration on 18.12.2018 which was received by petitioner through Building Department."

5. Learned counsel for petitioner submits that the aforesaid para 21 of the petition was replied in the counter affidavit filed by respondent-University that University has not denied the factum that the original representation was returned with the mark. Para 31 of the counter affidavit, which is in reply of para 21 of the writ petition is quoted hereinbelow:

"31. That the contents of paragraph no.21 of the writ petition are not admitted in the manner as stated hence denied. In reply thereto it is submitted that the matter pertaining to the 2nd Upward Movement Scheme has not been resolved with University Grants Commission as yet despite several communications have been made by the University. The University Grants Commission is not agree to provide the funds for this purpose."

6. Learned counsel for petitioner further submits that petitioner was suffering from mouth cancer and as such, could not pursue the matter and the writ petition was filed in the year 2021. Learned counsel for petitioner submits that the claim for second upward movement was launched in the year 1997 itself. It is the University, who has not passed any order and kept the same pending. Learned counsel for petitioner submits that University has been representing the petitioner that the matter is under active consideration and so the petitioner has approached the Court in the year 2021.

7. Learned counsel for respondent-University could not explain whether in compliance of order dated 20.8.2009, respondent-University has granted the benefits of second upward movement to petitioners in Civil Misc. Writ Petition No.9438 of 2006 (Wajid Husain and others Vs. Vice Chancellor, Aligarh Muslim University, Aligarh and others).

8. It is to be seen that the respondent-University has raised an objection with regard to delay and latches in filing writ petition and has also raised issue that in view of law of acquiescence, writ petition would not be maintainable. It is to be seen that the law requires that litigant to be vigilant in approaching the Court. The delay closes the right of litigant to press relief before the Court of law. It is further to be noted that every delay may not amount to latches, if they were, explainable. In the present case, claim for second upward movement was initiated by respondent-University on 7.1.1997. Petitioner had applied under the aforesaid scheme on 21.7.1997 while he was in service. As per office memo dated 3.9.1997, University has granted the aforesaid scheme to some of the employees, however later on, respondent-University by order dated 1.10.1997 had ordered that second upward movement may not be processed and be kept in abeyance till further orders. Thereafter, University again issued an order dated 15.10.1997 clarifying the earlier order dated 1.10.1997 that cases in which application for second upward movement has been passed and order has been passed, the same may be cleared and implemented. The effect of the same was that some employees were granted benefit, however, other employees' application were not processed and were kept in abeyance and no order was passed denying the benefits. Petitioner was under impression that his application was kept in abeyance and was waiting and in the meantime, he has

retired. However, some employees have approached this Court by means of Civil Misc. Writ Petition No.9438 of 2006 (Wajid Husain and others Vs. Vice Chancellor, Aligarh Muslim University, Aligarh and others) where the second upward movement was granted by judgment dated 20.8.2009.

9. Further University Counsel could not assist the Court whether the aforesaid judgment has been implemented by University in letter and spirit. Although the University has submitted that on the direction of University Grants Commission, the claim of some employees, who have been granted benefits were withdrawn. It is further to be noted that on 25.10.2018 petitioner had again approached after his retirement in the year 2000 for grant of second upward movement, however, on the aforesaid representation dated 25.10.2018 endorsement was made by Deputy Registrar that the representation is returned in original with a remark that the matter is under consideration. It has not been explained by learned counsel for respondent-University as to what decision has been taken on the application of petitioner preferred in the year 1997. The employer is required to address the grievance and claim of employee without delay. However, in the present case, University has passed an order dated 1.10.1997, keeping the application under abeyance till further orders. Subsequently, respondent-University has not passed any order, in fact, respondent-University by remark of the Deputy Registrar on the representation dated 25.10.2018 have assured that the matter is under consideration. Such a conduct of University itself reflect that University was keeping the matter pending, which resulted in delay.

10. The emolument which the employees is expected to be received as part of condition of the service cannot be fizzled out in such a manner by the respondent-University by not addressing the grievance of the employee since 1997 and keep pending the application of petitioner. If the University Grants Commission was not permitting, respondent-University ought to have reject the application, however, could not have kept the same pending for long period. Respondent-University itself representing the employee that the matter is active consideration till 2018.

11. In view of above, the objection raised by respondent-University with regard to delay and laches and law of acquiescence is not sustainable and is hereby rejected.

12. At this stage, learned counsel for respondent-University submits that University may be permitted to decide the claim of petitioner for second upward movement in accordance with law.

13. Learned counsel for petitioner submits that he would have no objection, however, respondent-University may consider the effect of judgment of this Court dated 20.8.2009 passed in Civil Misc. Writ Petition No.9438 of 2006 (Wajid Husain and others Vs. Vice Chancellor, Aligarh Muslim University, Aligarh and others) wherein similarly placed employees have been granted second upward movement.

14. In view of aforesaid, it is hereby provided that petitioner shall file a fresh representation before the respondent no.1-Aligarh Muslim University, Aligarh through its Vice Chancellor, within 15 days from today along with a certified copy of this order. The same shall be considered and decided by respondent no.1 within a period of one month thereafter.

15. It is clarified that this Court has not decided the issue on merits and the authorities concerned shall independently apply its mind and pass order in accordance with law.

16. With the aforesaid observation/direction, the writ petition stands disposed of.

Order Date :- 1.5.2025 D. Tamang