

(2005) 06 KL CK 0010
In the High Court Of Kerala
Case No : W.A. No. 96 of 2003

Cochin University of Science and Technology

APPELLANT

Vs

Joseph James

RESPONDENT

Date of Decision : 30-06-2005

Acts Referred:

Cochin University of Science and Technology Act, 1986 — Section 2, 2(27), 2(28), 3(22)

Citation : (2005) 4 ILR (Ker) 89 : (2005) 4 KLT 555

Hon'ble Judges : K.A. Abdul Gafoor, J;K. Hema, J

Bench : Division Bench

Advocate : S. Gopakumaran Nair, for the Appellant; George Poonthottam, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—The point raised in this appeal by the Cochin University of Science and Technology is in a narrow compass - as to whether the first respondent/writ petitioner, who was the Deputy Director of Physical Education and Head of Department in the appellant University, now redesignated as the Director and Head of Department, is occupying a "teaching post" so as to enable him to continue in service until the age of 60 years, which is prescribed as the superannuation age, for the members of teaching staff. The learned single Judge, relying on the decision reported in P.S. Ramamohana Rao Vs. A.P. Agricultural University and Another, and considering the duties enjoined on the first respondent/petitioner came to the conclusion that he is occupying a teaching post and therefore, entitled to the benefit of continuance until 60 years of age and accordingly Ext.P10 issued to the contrary was quashed.

2. Assailing this finding, it is contended by the University that the petitioner was appointed as a Physical Education Officer initially. There is no department of Physical Education in the University. He has never been assigned any work of imparting lessons or instructions or of teaching. He had been assigned only the

job of accompanying the students in competitions of games or athletics and to form University teams to represent the University in inter-University meets. The University did not have a department of physical education and he was not expected to impart any instructions to the students. Hence he cannot be regarded as Physical Education Teacher. Relying on the definition of "teacher" contained in Section 3(22) of the Cochin University of Science and Technology Act (for short "the Act") it is contended that anyone other than Professor, Reader, Lecturer imparting research in the department or schools of the University or in any recognised institutions of the University alone will be considered as a teacher. As per the definition, Teacher means a Professor, Reader, Lecturer or such other person imparting instruction or supervising research in the departments/schools of the University or in recognised institutions, whose appointment has been approved by the University. Therefore, unless one comes within the definition and his appointment is duly approved by the University, he cannot be regarded as a teacher.

3. Referring to the decision of the Apex Court reported in P.S. Ramamohana Rao Vs. A.P. Agricultural University and Another, it is submitted that definition of the word "teacher" considered by the Apex Court in that decision differs from the definition in the Act. In the definition considered by the Apex Court, one need not be attached to a department or a school or recognised institution, but need only be one appointed "for the purpose of imparting instruction or conducting and guiding research or extension programmes, and any person declared by the statutes to be a teacher". When the wording in the Act is different, necessarily the decision of the Apex Court cannot, as such, be applied to the facts of this case. It is further submitted distinguishing the decision reported in Sivasankara Kaimal Vs. University of Calicut, that it was a case where the incumbent was appointed as a "coach" which means to coach students in the concerned game or sports which involves element of instructions and therefore a teacher. On the other hand, it is submitted, placing reliance on the decision of a Division Bench in W.A.No. 911/97 that a Head of Department of Physical Education was found to be a member Of a non-teaching staff in relation to Calicut University. That decision squarely applies to this case. Therefore, the view taken by the learned single Judge is not justified on the fact situation of the case, so contends the appellant.

4. At the same time, it is contended by the counsel for the first respondent/petitioner that there is a Department of Physical Education in the University. That is why he was also directed to officiate as the Head of Department. In the original petition, the first respondent/petitioner styled himself as the Deputy Director of Physical Education and Head of the Department. This is not disputed by the appellant/University. Moreover, Ext.P19 order issued by the University itself speaks about the Department of Physical Education Head of which is instructed to escort the team. Ext.P19 order thus shows that there is an existing department of physical education in the University. Equally so is the communication, Ext.P16. Therefore, the contention of the appellant/ University

that there is no separate department of Physical Education in the University cannot be accepted, the counsel submits. The counsel further relies on the duties assigned to him in Ext.PI and contends that one among such duties was "to guide and supervise all physical/sports/games activities". "Guide" includes giving instructions and instructing the students is a part of teaching. Therefore, when he is assigned the duty to guide the students, necessarily, he is a teacher. In this regard, he relies on the very same decision of the Apex Court in Ramamohana Rao to contend that "it is inherent in the duties of a Director of Physical Education that he imparts to the students various skills and techniques of games". He also relies on the decision in Sivasankara Kaimal Vs. University of Calicut, to contend that he is also appointed to "give instructions to the students the rules of games". He is in the same position of a "coach" considered in that case. Therefore, he is a member of the teaching staff and he is entitled to continue until he attains the superannuation age of 60 years.

5. The definition of "teacher" as contained in Section 3(22) of the Act is as follows:

"Teacher means a Professor, Reader, Lecturer or such other person imparting instruction or supervising research in the departments/schools of the University or in recognised institutions, whose appointment has been approved by the University."

6. The respondent/petitioner is not a Professor, Reader or Lecturer. Necessarily, the entitlement of the petitioner to claim the benefit available to a teacher shall be if he is one coming within the expression "such other person" mentioned in the definition. As rightly contended by the counsel for the University, that such other person shall be one "imparting instructions or supervising research in the Department/School of the University". When it is revealed from the description of the petitioner himself that he is the Head of the Department, which is not disputed and from Ext.P19 order of the University and Exts.P16 and P17 communications that there is a "Department of Physical Education" in the Cochin University of Science and Technology, it cannot now be disputed that he is not attached to any department of the University. Ext.PI shows that one among the duties assigned to him is "to guide and supervise all physical/Sports/Games activities of the University Students". To guide means "to instruct and to direct" as per the dictionary meaning. To instruct means "to teach, to educate, to impart any information or even to train". Thus, the duties enjoined on the writ petitioner as per Ext.PI is more akin to that of a "teacher". Apart from that, considering almost similar duties assigned, the; Supreme Court in P.S. Ramamohana Rao Vs. A.P. Agricultural University and Another, held that:

"It is inherent in the duties of the Physical Director that he imparts to the students various skills and techniques of these games and sports. There are a large number of indoor and outdoor games in which the students have to be trained. Therefore, he has to teach them several skills and the techniques of these games apart from the rules applicable to these games."

Accordingly, the Supreme Court found, having regard to these aspects that "the appellant comes within the definition of "teacher" in Sub-clause (n) of Section 2 of the Act."

7. When the writ petitioner/first respondent is attached to a department and his duties are also to guide the students and instruct lessons in the games, necessarily, the difference in the definition considered by the Supreme Court with the definition in the Act does not make any difference in the position of the appellant, in any way, and it does not improve the case of the appellant/University. The Supreme Court also, in that case, had dealt with the duties assigned to an incumbent in the similar nature "to guide the students about the rules of the various games and sports" extracted in para 9 of the Supreme Court judgment. That is also with reference to the word "guide" which is available in Ext.P1 as well. So, there is no reason to take a different view to that contained in Ramamohana Rao's case.

8. The decision in W.A.No. 911/97 heavily relied on by the appellant, cannot also have application in this case because in that case it was held that:

"as on the materials placed before us we find that the first respondent was also not imparting instructions or was supervising any research under the University, we have no hesitation in holding that the first respondent cannot claim the status of a teacher in the University of Calicut as defined in Section 2(28) read with Section 2(27) of the Act".

9. Therefore, on the materials and evidence available in that case, the incumbent was not imparting any instructions; whereas based on Ext.P1, the duties enjoined on the post of Deputy Director of Education, as held by the Supreme Court in Ramamohana Rao's case, it has been established that he was having a duty "to guide the students which includes imparting instructions". Moreover, the post considered by the Division Bench in W.A.No. 911/97 was a post specifically included in the statute as a non-teaching post. The said decision cannot, in any manner, improve the case of the appellant.

Therefore, we confirm the decision impugned and dismiss the appeal. No costs.