
(2016) 07 KL CK 0013
In the High Court Of Kerala
Case No : WP (C) .No. 12179 of 2016

Dr. P. Gopinathan Pillai

APPELLANT

Vs

University of Kerala

RESPONDENT

Date of Decision : 08-07-2016

Acts Referred:

Kerala University Act, 1996 — Section 2(28)

Citation : (2016) 3 ILRKerala 677 : (2016) 3 KLT 902 : (2016) LIC 4218

Hon'ble Judges : Mr. Antony Dominic and Smt. P.V. Asha, JJ.

Bench : Division Bench

Advocate : Sri. Millu Dandapani, Advocate, for the Appellant; Sri. Paul Jacob, SC, University of Kerala, for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J.—The question raised in this writ petition is whether an Assistant Director working in the Centre of Adult, Continuing Education and Extension (CACEE) is a teacher of the University eligible to continue in service till he attains 60 years. When the writ petition came up for consideration before a learned single Judge, noticing a conflict between the judgments in W.A. 1099/88, which was relied on in Vasudevan Nair v. Vice Chancellor, [1997 (1) KLT 243], and in W.A. 180/92, learned Judge referred the matter to be heard by a Division Bench. It is accordingly that this case has come up for consideration before us.

2. In so far as the judgment in W.A. 1099/88 relied on in Vasudevan Nair (supra) and the judgment in W.A. 180/92 are concerned, we have examined whether there is any conflict as perceived by the learned single Judge. On such examination, it is seen that the judgment in W.A. 180/92, produced as Ext.P10 in the writ petition, relates to the continuance of the Director, CACEE. The writ petition filed by the Director was dismissed on the ground that the petitioner therein did not assert that he was holding a teaching post. Therefore, the learned Single Judge held that he can continue only till the age of 55 years. This judgment was rendered relying on the judgment of this Court in W.A. No.

1099/88.

3. In W.A. No. 180/92 filed by the Director, CACEE, the Division Bench found that the Pro-Vice Chancellor issued a certificate, Annexure IX, wherein it was stated that the Director, CACEE was teaching students of Post Master's Diploma in Adult Education and Continuing Education. Division Bench also found that W.A. No. 1099/88 was decided on the facts of that case; and that in the case of the Director, sufficient materials were available to show that he was holding the post of teacher and therefore, it was held that he could continue till he attains the age of 60 years. Reference has also been made to the judgment of the Apex Court in *P.S. Ramamohana Rao v. A.P. Agricultural University*, (AIR 1997 SC 3433), in which, it was held that the Director of Physical Education in Andhra Pradesh Agricultural University came under the definition of "Teacher" and was entitled to continue in service till 60 years.

4. In W.A. No. 1099/88, the Division Bench was considering the case of a Deputy Director in the Department of Adult Education in Calicut University, who claimed retention in service till the age of 60 years on the ground that she is a member of teaching staff. The contention of the University was that there was no teaching imparted for Adult Education and that she was not employed as "teacher" in or under the University. The question which arose for consideration was whether the recognition of a person to guide or supervise research of Ph.D. students by the University would confer on him the status of a "teacher" as defined in Section 2(27) read with Section 2(28) of the Calicut University Act. The Division Bench found that mere recognition was not enough and that the essence of the matter is that the person must have been employed by the University to supervise or guide research. It was also found that even the case put forward therein was only that the respondent therein was recognised by the University to guide research students for their Ph.D. degree and not that she was employed or appointed by the University to supervise or guide research. It was found that by giving recognition to guide or supervise students for Ph.D. course, the University did not employ her to supervise research or guide research, but only acceded to her request for such recognition, or, in other words, it permitted the respondent to supervise or guide research students. In the absence of any material to show that she was employed for teaching or for imparting instructions, the Division Bench held that she was not a "teacher" entitled to continue in service till she attains the age of 60 years.

5. On a scanning of these two judgments we are unable to find any conflict, as observed by the learned Single Judge, i.e., between the decisions in W.A. No. 1099/88 relied on in *Vasudevan Nair* (supra) and in W.A. No. 180/92. These judgments were rendered in the peculiar factual circumstances arising in each of the cases. In the light of the above, we do not find justification for a reference to a larger bench.

6. In so far as the merits of the controversy raised in this writ petition are concerned, as we have already stated, the question is whether an Assistant

Director in the CACEE is a "teacher" of the University, entitled to continuance in service till 60 years. As far as this question is concerned, it is relevant to refer to sections 2(27) and 2(28) of the Kerala University Act which define "teacher" and "teacher of the University". A reading of section 2(27) shows that "teacher" has been given the meaning as a "principal, professor, associate professor, assistant professor, reader, lecturer, instructor, or such other person imparting instructions or supervising research in any of the colleges or recognised institutions and whose appointment has been approved by the University". Similarly, as per section 2(28), only a person employed as teacher in any of the institutions maintained by the University is a "teacher of the University". Statute 10 of Chapter III of the Kerala University First Statutes, 1977 makes the provisions of the Kerala Service Rules, Kerala State & Subordinate Service Rules and the Kerala Government Servants' Conduct Rules applicable to the teachers of the University. Further, the proviso to Statute 10 prescribes that age of retirement of teachers of the University shall be 60 years.

7. A reading of these provisions would therefore show that a person who has been appointed in any of the categories mentioned in section 2(27) and who is imparting instructions or supervising research in any of the colleges or recognised institutions of the University and whose appointment has been approved by the University alone is a teacher. Similarly, only a person employed as a teacher in any institutions maintained by the University is a teacher of the University as per section 2 (28) of the Act. Such a teacher of the University alone is entitled to the benefit of the proviso to Statute 10 of Chapter III of the Kerala University First Statutes, 1977 and entitled to continuance in service till 60 years.

8. Interpreting the similar provisions contained in the Calicut University Act, in W.A. 1099/88, a Division Bench of this Court has held that an Assistant Director in the Department of Adult Education was not a teacher of the University. This was on the reasoning that to be a teacher of the University what is required is that such person should have been employed by the University to do the work of guiding or supervising research. The relevant part of the judgment reads thus:

"7. The question for consideration is as to whether the recognition by the University of the respondent as a person to guide or supervise Research of Ph.D. Students confers on her status as a teacher as defined in section 2 (27) read with section 2 (28) of the Act. It is clear from these provisions that it is not enough that a particular person is recognised to supervise or guide research. What is of essence of the matter is that the person must have been employed by the University to supervise or guide research. The case put forward by the respondent at the highest is that she has been recognised by the University to guide research students for their Ph.D. Degree. That is precisely the stand taken by the University also. It is nobody's case that the respondent has been employed or appointed to supervise or guide search. What has been done by the University is to give recognition having regard to the attainments of a particular person as having the necessary qualifications to guide or supervise research.

When recognition was given to the respondent to guide or supervise students for Ph.D. Course, what the University did was not to employ the respondent to do supervisory work on research or guide research, but only to accede to her request for such recognition. In other words, it only amounts to granting permission to the respondent to supervise or guide research students. There is a fundamental difference between assigning of particular duties and responsibilities and the granting of permission to a particular person on her own request to do certain thing. When recognition is given by the University to supervise or guide research, it is not in exercise of any right of the employer to expect the person concerned to do this work of supervising or guiding research as an integral part of the duties and responsibilities attached to that post. The concept of employment is highlighted in the definition of the University teacher given in section 2 (28) of the Act. It is therefore clear that it is not enough that a person is recognised as a guide or supervisor for research, to give him or her the status of a teacher. What is required is that such a person should have been employed to do such work of guiding or supervising research."

9. This judgment of the Division Bench has been followed by another Division Bench in *Walter Alexander v. University of Kerala*, [2011 (1) KLT 963] and rejected the claim of the appellant therein to be a teacher on the basis that the University did not engage him to act as a research guide or to supervise the work of research students.

10. Bearing these principles in mind, we shall examine the case of the petitioner herein. By Ext.P1 order dated 1.2.1990, the University appointed the petitioner as a Project Officer in the CACEE. He continued in service and was later, by Ext.P2 order dated 17.12.2012, promoted as Assistant Director. He attained the age of 56 years, the age of retirement of non-teaching staff, on 20.5.2016 and apprehending that he would be retired from service on 31.5.2016, writ petition was filed with a prayer to direct the respondents to permit him to continue in service till he attains the age of 60 years on 31.5.2020. He also sought a declaration that being the member of teaching staff of the University under section 2(27) of the Kerala University Act, he has every right to continue in service till he attains 60 years of age.

11. In support of these contentions, the petitioner relied on Ext.P3, a letter issued by the Registrar of the University to the Additional Director of the Ministry of Human Resources Development, Government of India, where it is stated that the CACEE is actively involved in teaching, research, extension and field outreach activities and implement programmes to the need and requirements of the community. It is also stated that they conduct full time regular courses, courses through Institute of Distance Education and Continuing Education courses. Counsel also invited our attention to Exts.P4 and P4 (a), which are the annual reports of the University for 2014 and 2013 respectively. These documents show that the petitioner was teaching in the PG, PG Diploma and in certificate courses; that he was the Academic Counsellor for M.A. Sociology, Indira Gandhi National

Open University; that he has co-ordinated certificate and Diploma courses and was in additional charge of Director CACEE. It also shows that he has acted as Research Guide and has conducted training programmes, workshops, college level programmes, Dooradarshan programmes and such other programmes of the Centre.

12. Counsel also placed reliance on Ext.P5 report of the sub committee on the UGC pay scale revision and Exts.P6 and P7 orders issued by the University. The cumulative effect of these three documents are that based on the report and after getting the concurrence of the UGC, the Syndicate at its meeting held on 1.9.1987 decided that the post of Director, Assistant Director and Project Officer be placed in the scales of pay of Professor, Reader and Lecturer of the University respectively and that this decision has been given effect by Ext.P7. Ext.P8 is a certificate issued by the Director of the CACEE, which also certifies that during his service, the petitioner has been associated himself in teaching, research, training, evaluation, publication, extension and field out reach activities of the centre and that he is the co-ordinator of the PG Diploma in Educational Planning, Management and Administration. Our attention was also invited to Exts.P14 and P18 produced by the petitioner along with I.A. 6531/16. Ext.P14 is another certificate issued by the Director of the CACEE, which also says that the petitioner was teaching in Masters Degree/Post Graduate Diploma/Diploma in PG Certificate courses.

13. Ext.P14(b) is another certificate which states that the petitioner has been associated with teaching research, extension, publication and other activities of the centre and that as a faculty member for Diploma in Non-Formal Education, he was engaged in teaching and guiding research students. Ext.P15 is the time table for Personal Contact Programme and Ext.P15(a) shows that some of the sessions were engaged by the petitioner himself. Ext.P15(b) is the proceedings of the CACEE, informing the petitioner that he has been identified as the Supervising Teacher to guide the students of Master of Human Resources Management in the preparation of their project work. Ext.P16 and Ext.P16(b) are the proceedings of the University whereby registration has been granted for research leading to Ph.D degree in Sociology to the students mentioned therein, with the petitioner as their Guide. Ext.P17 is the scheme and syllabus of PG Diploma in Educational Planning, Management and Administration which has been edited by the petitioner.

14. According to the petitioner, the aforesaid documents would show that he has been actively engaged in teaching students and guiding the research students and that therefore, he is a teacher of the University entitled to the benefit of the proviso to Statute 10 of Chapter III of the Kerala University first Statutes, 1977.

15. In support of this contention, learned senior counsel appearing for the petitioner also placed reliance on Exts.P10, P11 and P12 judgments of this Court in W.A. 180/92, W.P(C). 3141/04 and W.P(C). 25669/04 respectively. He also referred us to the judgment of this Court in Sivasankara Kaimal v. University of

Calicut, [2003 (1) KLT 146].

16. Reading of the judgment in W.A.180/92 show that in that case, the University did not have plea in the counter affidavit that the appellant therein was not holding a teaching post. On the other hand, the appellant had asserted in his pleadings that he was holding a teaching post and that he was entitled to continue in service till he attained 60 years. This Court has also taken note of the factual materials that were available to indicate that the appellant therein was in fact engaged in teaching. On the above facts and referring to the judgment of the Apex Court in P.S. Ramamohana Rao v. A.P. Agricultural University, (AIR 1997 SC 3433) and also taking into account the fact that on the strength of the interim order passed by this Court the appellant had continued in service till he attained 60 years, the appeal was disposed of declaring that service till the age of 60 years shall be reckoned for terminal benefits.

17. In so far as W.P(C). 3141/04, a copy of which has been produced as Ext.P11 is concerned, the petitioner therein was the Director of the CACEE and his claim was that he should be allowed to continue up to the age of 60 years as per the UGC norms. The judgment shows that it was rendered merely following the judgment in W.A. 180/92, and taking the view that there was absolutely no reason to hold that the petitioner therein should not also be treated at par with his predecessor in the post. Accordingly, he was allowed to continue till the age of 60 years.

18. Ext.P12 judgment in W.P(C). 25669/04 is the case of an Assistant Director in the CACEE and his claim also was to continue in service until he attained 60 years of age. The writ petition was allowed and it was declared that he was a teacher of the University and entitled to continue in service up to the age of 60 years.

19. According to us, while considering the question whether a person is a "teacher" of the University, the issue to be examined is whether he is a "teacher of the University" as defined in section 2(28) of the Kerala University Act. As we have already stated, to be a teacher of the University, a person must be employed as teacher in any of the institutions maintained by the University. We do not find that the question whether the claimants, whose cases were considered by this Court in Exts.P10, P11 and P12, were "teachers of the University" as defined in section 2(28) has been pointedly framed or considered. Therefore, we are not persuaded to place reliance on these judgments and hold that the petitioner herein is also a teacher of the University.

20. On the other hand, according to us, in so far as this case is concerned, admittedly, the petitioner has been appointed as a Project Officer in CACEE, who was later promoted as Assistant Director. Although he is certified to have been engaged in teaching and guiding research students, there is nothing to show that the petitioner is a person who has been employed by the University as a teacher in the CACEE, an institution maintained by the University, to be a "teacher of the

University" as defined in section 2 (28) of the Act. When the petitioner is not a teacher of the University, he cannot claim the benefit of the proviso to Statute 10 of Chapter III of the Kerala University First Statutes, 1977 and continue in service till 60 years.

21. For the aforesaid reasons, we are unable to accept the case of the petitioner and according to us, he is not entitled to continue in service till 60 years, as claimed in the writ petition.

22. Writ petition fails and is accordingly dismissed.