

(2002) 09 KL CK 0024

In the High Court Of Kerala

Case No : W.A. No's. 2174 and 2175 etc. of 1999

Sivasankara Kaimal

APPELLANT

Vs

University of Calicut

RESPONDENT

Date of Decision : 26-09-2002

Acts Referred:

Calicut University Act, 1975 — Section 2(27), 2(28)

Citation : (2003) 1 ILR (Ker) 506 : (2003) 1 KLT 146

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

Bench : Division Bench

Advocate : K. Ramakumar, for the Appellant; S. Gopakumaran Nair and P.I. Davis, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor, J.—An interesting question arises in these appeals-, whether coaches appointed by the University for different games and athletics are "teachers of the University" as defined in Section 2(28) of the Calicut University Act. If the answer is in the affirmative, necessarily, they can continue in service until they attain the age of 60 years. On the other hand, if the answer is in the negative, they being members of non-teaching staff, have to retire on superannuation on completion of the age of 55 years going by the provisions contained in the first statutes. The learned single Judge answered this question in the negative and dismissed the Writ Petitions. So these appeals.

2. All the appellants except that in W.A. No. 2174/99 had retired from service. They continued until the age of 60 years on the strength of interim orders passed in the respective Original Petitions. The appellant in W.A. No. 2174/99 is still continuing in service, though he had crossed the age of 55 years on the strength of the interim order passed in that case. The original appellant in W.A. No. 2689/99 is no more. The retrial benefits have to be calculated based on the findings as to whether he was entitled to continue until 60 or 55 years as the case may be. Therefore, his legal representatives have got themselves impleaded

to prosecute the appeal further.

3. Now, we will proceed to examine the issue involved. All the appellants were appointed as "coaches". This is not disputed. According to the appellants, especially, as averred in para. 18 of the memorandum of the Original Petition in O.P. No. 6337/91, they are taking classes for physical education, imparting classes to the students in the University Departments and affiliated colleges. They are also imparting instructions to the University teams and co-curricular activities including physical education which is a subject of study. Therefore, they are persons imparting instructions to the students.

So they shall be regarded as "University Teachers". It is so contended by the other writ appellants as well. The writ appellant in W.A. No. 2175/99 along with C.M.P. No. 41239/99, has produced certain documents, Exts. P15, P16 and P17, whereby the University had appointed him to take classes for certain purposes. According to him, these are sufficient documents issued by the University itself to show that coaches are also imparting instructions and taking classes. Thus, on the basis of these pleadings and materials, they contend that they are University teachers in terms of the definition in Section 2(28) of the Calicut University Act. All of them also rely on the decision reported in P.S. Ramamohana Rao v. A.P. Agricultural University AIR 1977 SC 3433.

4. On the other hand, it was contended by the University that "coaches" are not teachers. Calicut University First Ordinance, 1978 categorises the different non-teaching posts in its Schedule. Item No. 57 is "coaches". When the persons with the designation as "coaches", like the petitioners, are statutorily categorised as members of non-teaching staff, they cannot contend that they are "teachers" to come within the definition in Section 2(28) of the Act. The provisions contained in the University Ordinance forms part of the conditions of service of the coaches. Therefore, they being so categorised as members of non-teaching staff, they shall have to be governed by the retirement rules as are applicable to the non-teaching staff and therefore, they have to retire on superannuation at the age of 55 years. It is further contended by the University that there are different methods to the appointment to teaching posts and non-teaching staff. The petitioners were appointed following the procedure as are applicable to the members of the non-teaching staff. So they cannot contend that they belonged to teaching category. Yet another contention raised by the University is that the petitioners appointed as coaches do possess only matriculation and certificate issued by the Sports Council of India; whereas for appointment as teachers a person shall be, at least a graduate, if not a post graduate. Therefore, on the basis of the qualification also, it cannot be taken that they are teachers. However, it is submitted that even if the coaches are imparting any lessons or instructions to the students, such instructions do not lead to confer any degree for such students. Therefore, it cannot be taken that they are attached to any "Teaching Department" to categorise them as members of teaching staff. The instructions, if any, imparted by them are only "occasional instructions" as held

by this Court in O.P. No. 2437/95 in the case of a member of non-teaching staff engaged to take classes in M.Sc. (Marine Chemistry) course. In support of this, the counsel relies on a Division Bench decision of this Court in W.A. No. 911/87. It is submitted that reversing the decision of a learned single Judge to treat a Director of Physical Education, Category No. 56, in the Schedule to the Calicut University First Ordinance, 1978 the Division Bench held that when such a category is specifically included among the non-teaching staff, in the Ordinance, a subordinate legislation; such persons cannot contend that they fall within the definition of "University Teachers" u/s 2(28) of the Act. The dictum in the writ appeal judgment shall be applied in the case of petitioners also. The decision of the Supreme Court in P.S. Ramamohana Rao Vs. A.P. Agricultural University and Another, does not have application in this case because the definition of "teacher" examined by the Supreme Court in that case was an inclusive definition, whereas the definition of the teacher as contained in Section 2(27) which also have to be read with Section 2(28) is a categoric definition including certain categories. Therefore, the Supreme Court decision cannot have direct application to the facts of the case.

5. It is in the background of these mutually opposed contentions, that we have to examine the issue.

6. The learned single Judge, in para. 10 of the judgment held as follows:

"The coaches like the petitioners are expected to coach the team for various games in order to equip them to participate in the various tournaments. The averments in the Original Petition and the statements in the certificate are not enough to come to a definite conclusion that the coaches are imparting instruction. The object of imparting instructions must be for the purpose of enabling the students to appear for any examination and to obtain degrees or diplomas. The very name Coach implies that their duty is only to coach the team and not to impart any instruction. It is also very difficult to comprehend the position that a coach of a particular game can impart instruction to the students who want to play a particular game. The sports in general term could be a subject. But, not a particular game can be considered as a subject and part of the syllabus of any degree or diploma. Moreover, it is pertinent to point out that the Director of Physical Education who must be considered as No. 1 in the Department of Physical Education could not succeed before this Court in his contention that he was a teacher coming under the definition of the teacher under the Calicut University Act. Therefore, I do not find any justification to brand the coaches in the Physical Education Department of University, like the petitioners as persons coming under the definition of teachers. As rightly observed by the Division Bench, it is not possible to visualise the transformation of the petitioners from a non-teaching post to a teaching post. Therefore, the Original Petition fail. Dismissed. Those petitioners who continued as coaches under the interim orders are not bound to refund the salary which they got."

Thus the element of imparting of instructions is even accepted by the learned

single Judge. The learned single Judge held that they are not teachers because the coaches are not giving instructions to enable the students to appear for examination or enabling them to get any degree or diploma. But the learned single Judge, while holding so, did not specifically examine a specific prayer sought for in the Original Petition namely to declare the inclusion of coaches among non-teaching staff, in the schedule to Clause III of Chapter 15 of the Calicut University First Ordinance, 1978 as ultra vires to the Calicut University Act. It is contended by the appellants that, had that been examined, necessarily, the conclusion would have been different. Insofar as that contention and prayer had not been examined, it requires to be examined in the appeal, they contend. A reading of the judgment discloses that, that aspect has never been dealt with and the learned single Judge came to the conclusion that the appellants are not "teachers" as their category is specifically categorised as non-teaching category in the Schedule to the first Ordinance as referred to above. When a particular category which has a function of imparting instructions is categorised as a non-teaching post, the incumbent cannot contend that by reason of the functions they shall be termed as teachers, because the statutory definition or categorisation as may be ascribed by the statute will have its force as a condition of service. They cannot proceed further, unless that condition itself is challenged as ultra vires of the Constitution or Act and consequently struck down as invalid.

7. In this case, as already mentioned, there is a contention and consequent prayer in that regard. That has not been considered by the learned single Judge. Therefore, we have to examine the challenge against statutory provision.

8. The definition of "Teacher of the University" as contained in Section 2(28) of the Act reads as follows:

" "Teacher of the University" means a person employed as teacher in any institution maintained by the University."

To understand the term "teacher" in this definition, it is essential to understand the definition of teacher as contained in Section 2(27) of the Act. This definition indicates that Professors, Associate Professors, Assistant Professors, Reader, Lecturer, Instructor etc. are teachers. The definition does not stop there. It further states that a teacher means such persons imparting instructions. So the definition is so clear to include the other categories which are not specifically mentioned in the section, but having the function of imparting instructions. The very definite case of the appellants in their pleadings is that they are imparting instructions, as already dealt with above.

9. In the counter affidavit filed by the University, at the appellate stage, it has been submitted that "the work is mainly to give coaching to the University team carved out from the affiliated colleges". It has also been stated in paragraph 8 that "the functions of the University coaches in various games are to give training to the students of affiliated colleges whereby enhance their basic skill." Thus an element of imparting training is there in the function of the coaches and

they have to coach the team members who are none other than the students of either the University or the colleges affiliated to the University and it is for that purpose, the coaches have been appointed. Definition of the teacher does not have any reference to the method of appointment of the category concerned or to the qualification to the respective posts. But the definition is more related to the functional aspect. When it is admitted in paragraphs 8 and 9 of the counter affidavit, that their function includes imparting instructions, it requires a deeper examination as to whether the coaches are imparting lessons.

10. The dictionary meaning of the word "coach" in Oxford Dictionary is "instructor, teacher, trainer, tutor", in its noun form. In its verb form it includes guide, instruct, teach, train. When we come to the meaning of teacher in the same dictionary, we see that "teacher" means "adviser, coach, counsellor, demonstrator, educator, governess, guide, guru, instructor, lecturer etc. etc. In its verbal form, it means giving systematic information, instruction or training to (person) subject to skill. So even if one gives instructions in a skill, he is a teacher.

11. The petitioners were appointed as coaches to impart skill to the students selected for a particular category of game or athletic. They are appointed, even admittedly in the counter affidavit, to train the selected students. Necessarily, the duty that is enjoined on the coaches is to impart lessons in particular game or athletic and to train the students and to develop their skill so that they bring laurel to the University and to equip them to compete and win matches. Therefore, going by the definition contained in Section 2(28) read with Section 2(27), it has to be construed that, the coaches are appointed to impart instructions. Necessarily, such category comes within the definition of "teacher".

12. Ordinances are framed by the University as empowered u/s 36 of the Calicut University Act. The said section reads as follows:

"Subject to the provisions of this Act and the Statutes, the Syndicate shall have power to make Ordinance providing for all or any of the following matters, namely:-

- (a) the levy of fees in colleges and other institutions, by the University;
- (b) the residence and discipline of students;
- (c) the work load and pattern of teaching staff in colleges;
- (d) the fixation of the scales of pay of various posts in the University and the terms and conditions of service of officers of the University; and
- (e) all other matters which by this Act or the Statutes are to be or may be, provided for by the Ordinances."

Thus any Ordinance framed shall be subject to the provisions in the Act. In other words, any provision contained in the Ordinance cannot run contra to any of the provisions in the Act. The Schedule, a relevant provision in the Ordinance,

categorise "coaches" into non-teaching category. We have already held that coaches come within the definition of teacher or teacher of the University as the case may be in terms of the Act. When in terms of the Act coaches are teachers, by making a provision in the Ordinance, such teachers cannot be categorised as members of non-teaching staff. The definition is contained in the plenary legislation, whereas the exclusion comes in subordinate legislation brought in as empowered by the plenary legislation. Necessarily, the plenary legislation will prevail over the subordinate legislation and whatever stated in the subordinate legislation contrary to the parent legislation, shall have no enforceability and has to be declared ultra vires. In the result, the prayer sought for by the appellants in that regard has to be allowed.

13. When we do so, necessarily, the petitioners/appellants have to be treated as teachers. When they are teachers, it shall have to be declared that they can continue until the age of superannuation as are applicable to the teachers viz., 60 years as per the First Statute.

14. In this regard, it is profitable to refer to the decision of the Supreme Court in P.S. Ramamohana Rao Vs. A.P. Agricultural University and Another, Para 10 of the report reads as follows:

"From the aforesaid affidavit, it is clear that a Physical Director has multifarious duties. He not only arranges games and sports for the students every evening and looks after the procurement of sports material and the maintenance of the grounds but also arranges inter-class and inter-college tournaments and accompanies the students team when they go for the inter-University tournaments. For that purpose, it is one of his important duties to guide them about the rules of the various games and sports. It is well known that different games and sports have different rules and practices and unless the students are guided about the said rules, and practices they will not be able to play the games and participate in the sports in a proper manner. Further, in our view, it is inherent in the duties of a Physical Director that he imparts to the students various skills and techniques of these games and sports. There are 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."

This enables us to reinforce our finding as above. On the other hand, the judgment in W.A. No. 91/87 cannot have application in this case as in that judgment, the vires of exclusion of coaches has not been challenged or considered.

As the appeals thus succeed, necessarily, the retiral benefits of those who had retired shall be computed as if they had validly and lawfully continued till the age of 60 years. The appellant in W.A. No. 2174/99 shall have the right to continue until he attains the age of 60 years. Writ appeals are allowed as above. The retiral benefits wherever payable shall be worked out and paid expeditiously,

within four months from the date of receipt of a copy of this judgment.