

(2010) 03 CAL CK 0033
In the Calcutta High Court
Case No : F.M.A. 106 of 2008

Sri Utpal Ray

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:

Kalyani University Act, 1960 — Section 2
Kalyani University Act, 1981 — Section 2(19), 2(20), 55(11), 55(9)
Kalyani University Ordinances — Ordinance 2(2), Ordinance 22, Ordinance 3

Citation : 114 CWN 1138

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Kishore Kumar Prasad, J

Bench : Division Bench

Advocate : Jaharlal De and Sanghamitra Nandy, L.K. Gupta, Amitava Chowdhury, M. Chowdhury and Sayan De, for the Appellant; Tapabrata Chakraborty and Goutam Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Pranab Kumar Chattopadhyay, J.—The appellant herein was appointed as physical Instructor in the University of Kalyani and filed the writ petition claiming higher salary and teaching status along with three other physical Instructors who have already retired from service.

2. The learned Single Judge disposed of the said writ petition by allowing the prayer for higher pay scale at par with the physical Instructor/Instructress of colleges affiliated to the Kalyani University and rejected the other prayer with regard to declaration of status of the writ petitioner as teacher of the University.

3. Assailing the aforesaid judgment and order passed by the learned Single Judge, present appeal has been preferred.

4. The direction of the learned Single Judge with regard to fixation of higher scale of pay for the appellant/writ petitioner at par with the physical Instructor/Instructress of the colleges affiliated to the Kalyani University has been accepted

and complied with by the respondent-University.

5. Therefore, only question now to be decided in the present appeal is about the legality of the claim of the appellant for teaching status being a physical Instructor of the Kalyani University.

6. In the Ordinance framed under the Kalyani University Act, 1960, "Teachers of the University" has been specifically defined. Ordinance 2(2) defines the expression "Teachers of the University" as follows:

Ordinance 2(2): "Teachers of the University" means all persons appointed by the University for the purpose of imparting instruction or conducting and guiding research in its constituent Colleges or Research Institutes or in the Extension Wing of its faculty of Agriculture (excluding Research Fellows, Assistants and Scholars and Technical Assistants) and includes the Director and the Assistant Directors of Research Institutes, the Director and the Assistant Director of Extension, the Director and the Assistant Director of Physical Education and such other persons as may be declared by the University to be "Teachers of the University" from time to time.

7. Ordinance 3 is also relevant in this regard and the same is also reproduced hereinbelow:

Ordinance 3: Unless otherwise decided by the University, Teachers of the University shall ordinarily be of the following categories, namely:

- i) Professors,
- ii) Readers,
- iii) Lecturers, and
- iv) Instructors or Tutors.

8. Kalyani University Act, 1960 defines "Teacher" in Section 2(g) as follows:

Section 2(g): "Teacher" means a person appointed as such by the University or a College, either whole-time or part-time, for the purpose of imparting instruction or conducting and guiding research or experimental work and includes a professor, assistant professor, reader, lecturer and any other person holding a teaching post and also a person who may be declared by the Statutes to be a teacher.

9. Kalyani University Act, 1960 was replaced by the Kalyani University Act, 1981. Sub-sections (19) and (20) of Section 2 of the Kalyani University Act, 1981 are also very much relevant and, therefore, the same are quoted hereinbelow:

Section 2(19): "Teacher" means a Principal, Professor, Assistant Professor, Reader, Lecturer, Demonstrator, Tutor, Instructor or any other person appointed or recognised as such by the University, either whole time or part time, for the purpose of imparting instruction or conducting research in the University or in

any affiliated college or institution.

Section 2(20): "Teacher of the University" means a professor, reader, lecturers or any other person appointed or recognised as such by the University either whole time or part time for the purpose of imparting instruction or conducting research in the University.

10. Ordinance 22 also defines the term "Teacher" as follows:

Ordinance 22: Unless otherwise decided by the Executive Council, teachers of the University shall ordinarily be of the following categories namely?

i) Professor

ii) Readers

iii) Lecturers and part time teachers.

11. While assailing the judgment under appeal it has been submitted on behalf of the appellant that the post of physical Instructor was neither advertised as non-teaching post nor the same was indicated in the letter of appointment. The terms and conditions of service of the appellant is guided by the University Ordinance framed under the Kalyani University Act, 1960, which however, specifically provides that unless otherwise decided by the University, teachers of the University shall ordinarily be Professors, Readers, Lecturers and Instructors or Tutors.

12. The learned Counsel representing the appellant submitted that on behalf of the University, no resolution has been produced before this Court wherefrom it would appear that the University ever decided to exclude Instructors from the teacher category. The learned Counsel of the appellant also referred to the letter of the Registrar of the University dated 30th June, 1995 whereby the said Registrar specifically requested the Secretary, Higher Education Department, Government of West Bengal to award the status of teacher to the physical Instructors of the University.

13. Mr. De, learned Counsel of the appellant further submitted that all appointments made under Kalyani University Act, 1960 have been saved under Sub-section 9(e) of Section 55 of the Kalyani University Act, 1981. It has also been submitted on behalf of the appellant that in view of the saving clause as mentioned in Sub-sections 9(e) and (11) of Section 55 of the 1981 Act, appointments of physical Instructors made under the 1960 Act and the terms and conditions as provided in the University Ordinance framed under the 1960 Act are saved and, therefore, teaching status given to the physical Instructors under the 1960 Act shall have no effect notwithstanding anything contained to the contrary elsewhere in the 1981 Act or in any other law.

14. Referring to various documents annexed with the writ petition and the affidavits, learned Counsel of the appellant submitted that the University treated the appellant as a "Teacher" and specially the Registrar of the University by his

letter dated June 30, 1995 specifically accepted that the physical Instructors like the appellant herein are being deprived of the status of teachers.

15. The appointment of the appellant was made on the basis of an advertisement issued by the University in the month of June, 1971. Referring to the said advertisement, Mr. L.K. Gupta, learned Senior Counsel representing the Kalyani University submitted that the University decided not to treat the physical Instructor as the teacher of the University. Mr. Gupta further submitted that if the scale of pay and the required academic qualifications of a physical Instructor are compared with those of a lecturer then it would be apparent that the physical Instructor cannot be treated as a teacher of the University. Mr. Gupta also submitted that the physical Instructors like the appellant herein, were posted in the Sports division and not in the teaching division of the Department of Physical Education which would clearly manifest that the University never conferred teaching status upon the physical Instructors.

16. It has been submitted by the said learned Senior Counsel of the Kalyani University that the instruction of the University upon the physical Instructors to inform the students about the rules of the game does not in any manner involve assignment of teaching job to them. Mr. Gupta, learned Senior Counsel of the University also submitted that the University has the statutory power to declare some posts as teaching posts so as to make the incumbent a Teacher of the University.

17. According to Mr. Gupta, it is a power or authority of the University and this provision does not create any legal right in favour of any person to be declared as such. Mr. Gupta specifically submitted that the Kalyani University never declared the post of Physical Instructor as teaching post. It has also been submitted on behalf of the University that the post of a physical Instructor does not carry a teaching status under the Act and Ordinance of the University as otherwise the Registrar would have no occasion to write a letter to the Government for issuing appropriate order in this regard.

18. In any event, the State Government has also not issued any order or direction for treating physical Instructors of the University as teachers of the University or for conferring teaching status.

19. From the records we find that the Department of Physical Education in the Kalyani University has two divisions, namely, Sports Division and Teaching Division.

20. The appellant heavily relied on the letter dated 30th June, 1995 written by the Registrar, Kalyani University to the Secretary, Higher Education Department, Government of West Bengal which contained a request to the said Secretary to award teaching status to the Physical Instructors. By the aforesaid request the Registrar of University made it clear that the appellant herein was never appointed in a teaching post nor even the teaching status was awarded to the said appellant earlier. Therefore, the said Registrar of the University made a

request to the Secretary, Higher Education Department, Government of West Bengal for awarding teaching status to the Physical Instructors, which was, however, rejected subsequently by the Principal Secretary, Higher Education Department, Government of West Bengal.

21. While rejecting the aforesaid claim of the Physical Instructors, Principal Secretary, Higher Education Department specifically observed that the Executive Council of the University never took any decision to declare the Physical Instructors/Instructress as teachers. The Principal Secretary also held that the selection procedure and the nature of duties of the Physical Instructors/Instructress in colleges are not identical with those in the Kalyani University.

22. Although the Registrar of the University by the letter dated 30th June, 1995 requested the Secretary, Higher Education Department, Government of West Bengal to award teaching status to the Physical Instructors, the said Registrar by the subsequent written communication dated 5th December, 1995 to the said Secretary specifically mentioned that the Physical Instructors are under the Sports Division of the Physical Education Department and not in the teaching division. The text of the said letter dated 5th December, 1995 written by the Registrar of the University is set out hereunder:

Ref: R/Est(NT)/ Date: 5th December, 1995 To

The Secretary,

Government of West Bengal

Higher Education Department

Bikash Bhaban, Salt Lake,

Calcutta.

Sub: Question of revision of pay scale of Physical Instructors of the State-aided Universities.

Sir,

I should like to invite reference to your letter No. 445(7)-Edn(U) dated 25/29 August, 1995 on the subject mentioned above and to state that the Department of Physical Education of the University of Kalyani has two wings? a) Teaching Division and b) Sports Division. The Physical Instructors and the Coaches are under the Sports Division. Necessary particulars of the Instructors and the Coaches as asked for in your letter under reference are furnished in the enclosed sheet.

In this connection it is added that their long-standing demand is for the sanction of the scale of pay with all similar benefits as were extended by the Government to the Physical Instructors serving in Government and Non-Government colleges. Their case was placed in the 38th meeting of the Executive Council held on 27th September, 1995 and the Executive Council adopted a resolution on the above

mater, a copy of which is enclosed.

As their cases have merit, I would request you to kindly consider their cases sympathetically and favour the Instructors and the Coaches with pay with all admissible benefits.

Yours faithfully,

Sd/-

Registrar

23. Therefore, it is not in dispute that there are two divisions in the Department of Physical Education of the Kalyani University namely, i) Academic/Teaching Division ii) Sports Division.

24. The Physical Instructors/Instructress are admittedly, attached to the Sports Division which conducts the sports and games of the university.

25. The authorities of the University never wanted to confer teaching status upon the Physical Instructors and, therefore, the said Physical Instructors were placed in the Sports Division and not in the teaching division of the Department of Physical Education by the said University. Such decision of the University would also be reflected from the very nature of duty assigned to the Physical Instructors.

26. The Reader and Director (Ex-officio) of the Institute of Physical Education, Sports Division, University of Kalyani by the written communication dated 20th/25th June, 1973 specifically informed the Registrar, Gujarat University, Ahmedabad about the set up of the Physical Education Department of the University wherein it has been specifically mentioned that the Instructors are non-teaching employees. The aforesaid letter of the Reader and Director (Ex-officio) is set out hereunder:

Institute of Physical Education Kalyani, West Bengal Sports Division University of Kalyani Dated: 20/25th June, 1973 Ref. No. PE/EST-1/7733 To

The Registrar,

Gujarat University,

Ahmedabad.

Sir,

Kindly refer to your letter No. 6-4024-4203 dated 25.5.73 regarding designation of the Physical Education Staff.

In this connection I may mention that the set up of Physical Education Deptt. is somewhat different. In this University there is an Institute of Physical Education (which is a University Deptt.) with two wings ? one is College Division offering B.Ed. Degree in Physical Education and the other is Sports Division looking after

games and sports activities of the whole University. Teaching and other staff of College Division of the Institute of Physical Education shall also belong to the Sports Division.

The Staff pattern of the I.P.E. is as follows:

- 1) Reader & Director (Ex-Officio) Head of the Deptt. Institute of Physical Education.
- 2) Lecturer
- 3) Asst. Director & Lecturer (Ex-Officio)
- 4) Instructors (Non-teaching)

Yours faithfully,

Sd/-

Reader & Director (Ex-Officio)

27. By the subsequent office memorandum dated 4th July, 1973, Assistant Director, Department of Physical Education narrated the jobs to be performed by the Physical Instructors, which include organizing indoor and outdoor games, maintenance of daily records of the activities relating to maintenance of ground, arrangement of labour etc. The said office Memorandum dated 4th July, 1973 is set out hereunder:

Institute of Physical Education Kalyani, West Bengal Sports Division University of Kalyani Dated: 4th July, 1973 Ref. No. PE/EST-1/ Official Memorandum

Since the University has re-opened on 2nd July, 1973 after summer recess, all the University grounds are to be kept in playing condition.

All the Physical Instructors/Instructress of the University are, therefore, hereby informed that all the arrangements required in connection with the organisation of various indoor and outdoor games at different complexes are done in time, for smooth running of the games.

Further to this all the Physical Instructors/Instructress are also requested to maintain a daily record of the activities in a register covering the following points in connection with the complex and submit the same every fortnight to the undersigned, to keep him aware with the activities being done at the complex.

1. General: Regarding maintenance of ground, engagement of labour etc.
2. Activities: Name of the activities being conducted
- (b) Facilities available.
- (c) No. of participants.
- (d) Daily schedule.

(e) Steps taken to increase the participation.

3. Any other information, and suggestion to improve the sport.

Sd/-

S.N. Khanna

Asst. Director

Dept. of Physical Education

University of Kalyani

28. Draft Electoral Rolls for Election to the University Authorities are prepared separately for teachers and non-teaching staff. The appellant herein being the Physical Instructor was included in the Draft Electoral Roll of the "University Non-Teaching Staff". Furthermore, from the affidavit of the University it appears that the Physical Instructors/Instructress of the University represented to the Head of the Department that since they were Sports Division personnel, they should not be engaged in any teaching division activities.

29. Therefore, it is clear that neither the nature of duties performed by the Physical Instructors nor even the status so long conferred upon them by the authorities of the University can entitle the appellant herein to claim teaching status. Furthermore, under the provisions of the Kalyani University Act and/or Ordinance the said appellant also cannot claim teaching status.

30. The learned Single Judge has elaborately discussed the issues raised in the writ petition and considered the same strictly in accordance with law on the basis of the available materials on record. We do not find any error and/or infirmity in the findings of the learned Single Judge and, therefore, we affirm the judgment and order under appeal.

31. This appeal, therefore, stands dismissed as we do not find any merit in the same.

32. In the facts of the present case, there will be, however, no order as to costs.

33. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Kishore Kumar Prasad, J.

34. I agree.