

(2002) 03 MAD CK 0119

In the Madras High Court

Case No : W.P.Nos. 15872 of 1999 and 24752 of 2001 and W.P.M.P.No. 36688 of 2001

T. Padmanaban

APPELLANT

Vs

The Tamil University Thanjavur

RESPONDENT

Date of Decision : 27-03-2002

Acts Referred:

Bharathiar University Act, 1981 — Section 2
Bharathidasan University Act, 1981 — Section 2
Madras University Act, 1923 — Section 2
Madurai Kamaraj University Act, 1965 — Section 2
Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 2(10)
Tamil University Act, 1982 — Section 2, 22(1), 30, 34, 34A

Citation : (2002) 03 MAD CK 0119

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : R. Krishnamoorthy, for A. Fathimanthan, for the Appellant; G. Rajan, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—The petitioner is one and the same in both the writ petitions. In W.P.No.15872 of 1999, the petitioner has challenged the resolution of the respondent University made in No.99.56 dated 7.9.99 re-designating the petitioner as Librarian. In W.P.No.24752 of 2001, the petitioner has challenged the orders of the respondent University dated 31.10.2001 as revised in subsequent order dated 1.11.2001 in relieving the petitioner from the post of Librarian on attaining the age of superannuation at 58. Since the issues involved in both the writ petitions are identical, both the writ petitions are taken up together for common disposal.

2. The petitioner was appointed in the respondent University on 25.2.82 as Deputy Director of Documentation and Library Service and was promoted as Director of Documentation and Library Service by subsequent order dated

3.6.86. According to the petitioner, the post of Director of Documentation and Library Service namely Librarian is "teacher" and as such, the petitioner is entitled to continue in service till the age of 60 as per Statute IX of Chapter XXVI of the Statutes of the University. Hence, both the impugned orders treating the petitioner as non-academic staff are unsustainable.

3. Whereas the stand of the respondent University is that the petitioner is only a non-academic staff and is not a teacher and as such, the age of superannuation is 58 years only.

4. In view of the above, the question that arises for consideration in these writ petitions is as to whether the petitioner is a teacher and an academician or a non-teaching staff and a non-academician.

5. Heard Mr.R.Krishnamoorthy, learned senior counsel for the petitioner and Mr.G.Rajan, learned counsel for the respondent University.

6. The Tamil University Act, 1982 (hereinafter referred to as "the Act") was enacted to provide for establishment and incorporation of Tamil University at Thanjavur. Section 2(d) of the Act defines the word "prescribed" as meaning prescribed by the Act or the Statutes. Section 2(e) of the Act defines the word "Statutes" as meaning the statutes of the University made under the Act. Section 2(f) of the Act defines the word "teachers" as meaning Professors, Readers, Lecturers and other like persons as may be declared by the statutes to be teachers. For the purpose of arriving at a decision as to whether the petitioner is a teacher, in the absence of the inclusion of Librarian u/s 2(f) of the Act, the relevant provisions of the statutes have bearings.

7. Before considering the provisions of statutes, it would be also relevant to note the objects of the University as defined u/s 4 of the Act, more particularly, Section 4(9) which provides that the object of the University is to provide for research and determine the procedures regarding development of Tamil language and literature embodying in itself all the educational fields existing in the developing world and evolving suitable approach therefore . u/s 4-A(1) of the Act, the University is empowered to institute degrees, titles, diploma and other academic distinctions. u/s 4-A(2) of the Act, the University is empowered to confer degrees, titles, diploma and other academic distinctions. u/s 4-A(7) of the Act, the University is empowered to establish and maintain University libraries, research stations, museums for research and publication bureau. u/s 30 of the Act, the University is empowered to make statutes in respect of matters including the classification, the method of appointment and determination of the terms and conditions of service of teachers and other persons employed by the University. Section 34 refers to conditions of service and Section 34-A may be more relevant for the disposal of the writ petitions and the same is extracted as under:-

"34-A. Selection Committees.-(1) There shall be Selection Committees for making recommendations to the Syndicate for appointment to the posts of

Professor, Associate Professor, Reader, Lecturer, Researcher, Assistant Professor and Librarian of institutions maintained by the University.

(2) The Selection Committees for appointment to the posts specified in column(1) of the Table below shall consist of the Vice-Chancellor, a nominee of the Chancellor, a nominee of the Government and the persons specified in the corresponding entry in column(2) of the said Table and in the case of appointment of a Professor, Associate Professor, Reader, Lecturer, Researcher or Assistant Professor in a department, where there is no head of the Department, shall also consist of a person nominated by the Syndicate from among its members:-

The Table Professor, Associate Professor or Reader Lecturer, Researcher or Assistant Professor

Librarian (i) Two persons not in the service of the University who have special knowledge of the subject of Library Science or Library Administration to be nominated by the Syndicate.

(ii) One person, not in the service of the University, nominated by the Syndicate"

A reading of the above provisions clearly reveal that The Tamil University was established more or less on the same object, powers etc., as held by other Universities in the State of Tamil Nadu.

8. By virtue of the powers conferred u/s 22(1) of the Act, the Syndicate of the University has framed "Statutes of the Tamil University". Statute 2(I) defines "teachers" as meaning, Professors, (Emeritus Professors), Associate Professors (Readers), Assistant Professors (Lecturers), and other like persons as may be declared by the statutes to be teachers. Chapter XII deals with teachers of the University. In the preamble of the Chapter it is stated that "the teachers of the University shall include the Professors, Emeritus Professors, Distinguished Professors, Visiting Professors, Associate Professors (Readers), Assistant Professors (Lecturers) and other like persons as may be declared by the statutes to be teachers attached to the departments of study and research. Statute 5-(III) of Chapter XII relates to the mode of appointment of the Librarian. Chapter XXVI relates to the service conditions of the establishment of Tamil University. While referring to the mode of appointment and the selection committee, Statute V(4) of Chapter XXVI provides as under:-

"Except in the case of appointments otherwise stated all appointments of academic staff will be made by the Syndicate from the panels recommended by Selection Committees, constituted for this purpose as per Section 34-A of the Act, in respect of Professor, Associate Professor (Reader), Assistant Professor (Lecturer), Researcher and Librarian (Director of Documentation and Library Service).

In respect of administrative and other non academic staff, the appointments shall be made by the Syndicate from the panel recommended by the Selection

Committees constituted for this purpose by the Vice-Chancellor. Such Selection Committee constituted shall consist of five members as shown below:-

Vice-Chancellor - Chairman One Syndicate Member - Member Three experts in Administration and - Members Accounting lines The members shall be appointed for every selection by the Vice-Chancellor."

9. A combined reading of the Act and the Statutes of the University would lead to the following conclusions namely, a teacher can be a Professor, Associate Professor or Assistant Professor and other like persons as may be declared by the Statutes to be the teachers. The definition of teacher u/s 2(I) is exhaustive as it gives the power to the Syndicate to include the category of the post as teaching post/academic post by declaration under the Statutes. This would be further fortified by the provisions of Section 34 and 34-A of the Act. The said provisions of conditions of service, provide for a selection committee to be constituted for making recommendations to the Syndicate for appointment not only to the post of Professor, Associate Professor, etc., but also for the post of Librarian of the University maintained by the University. In the table to Section 34-A of the Act, Librarian is also included along with Professor, Associate Professor and Reader as well as Lecturer, Researcher and Assistant Professor. Coming to the Statutes, Chapter XII relates to the teachers of the University wherein the Librarian is also included under Statute V-I(iii) indicating that the teacher also includes the Librarian. The same is also clear by the express declaration of Statute V(4) of Chapter XXVI including the Librarian also for the purpose of Section 34-A. Therefore, as per Section 34-A of the Act, the statutes had declared Librarian also as a teacher.

10. The learned counsel for respondent on the other hand argued on the strength of the Appendix-I to the Statutes which prescribe the method of recruitment and qualifications for various academic and non-academic posts of the University and contended that the said Appendix refers to Professor, Associate Professor, Assistant Professor, etc., alone as academicians and the post of Director of Documentation and Library Service is included only in the non-academic post and therefore, the petitioner is not a teacher.

11. It is no doubt true that in Appendix-I, the post of Director of Documentation and Library Service is shown as non-academic and the said post is included under the category of academic posts. In view of the categorical declaration under Statute V(4) of Chapter XXVI including the post of Librarian (Director of Documentation and Library Service) under the category of teachers for the purpose of Section 34-A, merely because the Appendix speaks of the said post as non-academic, the declaration so made under the statutes as empowered u/s 2(I) and Section 34-A of the Act would be bad. Appendix cannot override the provisions of the Act. When there exists any inconsistency, the provision contained in the statute alone shall prevail as the appendix can utmost be considered as supplementary to the statutes. While interpreting the provisions of the Act, proper rule of construction is to be applied on a bare reading of the

provisions of the Act and the Statutes. When the Act enables the University to make provisions declaring anybody as a teacher and when such declaration is made under the statutes under V(4) of Chapter XXVI as further strengthened by statute 5(iii) of Chapter XII providing the method of selection of Librarian under the chapter teachers of the University, I do not find that the Librarian/Director of Documentation and Library Service could be considered as non-academic merely because it is included in the Appendix to the statutes. The learned counsel for respondent would further submit that the fact that the petitioner was appointed under the impugned order only as non-academician and the same would go to show that the petitioner cannot be considered as teacher. I do not find any justification in the said submission also since when the statutes declares a Librarian as teacher, merely because in the appointment order the post of Librarian (Deputy Director of Documentation and Library Service) is mentioned as non-academic post, it will take away the right conferred on the petitioner to be considered as teacher under the provisions of the Act and the statutes. Moreover, as referred earlier, the object of the University u/s 4-A of the Act is to provide for research and determine the procedures regarding development of Tamil language and literature and by virtue of the powers u/s 4-A of the Act, the University is empowered to confer degree, diploma and other distinctions and for which it can establish and maintain University libraries, research stations, museums for research and publication bureau u/s 4-A(7) of the Act. The post of Librarian is attached to the research activities which could be considered as one of the academic duty of the University as could be seen from Statute I of Chapter XII which provides the power to the University to institute Professorship, etc., including the Professorship, Associate Professorship, Assistant Professorship or other teaching and research posts and the post of Librarian is a research post and therefore only very rightly the post of Librarian has been included in Chapter XII of the Statutes under the heading teachers of the University and declared as a teacher u/s 34-A of the Act in Statute V(4) of Chapter XXVI of the Act.

12. The Tamil University Act, in effect, was borrowed from the Madras University Act, 1923. Almost all the provisions of the said Act have been incorporated in all the subsequent University Acts when various Universities like Bharathiyar University, Bharathidasan University, etc., were established. Section 2(j) of the Madras University Act defines a teacher meaning such professors, assistant professors, readers, lecturers, librarians and other like persons as may be declared by the Statutes to be teachers. Section 2(m) of the Madurai Kamaraj University Act, 1965 defines the word "teachers" as lecturers, readers, assistant professors, professors and other persons giving instruction in University colleges or laboratories, in affiliated or approved colleges, or in hostels and librarians as may be declared by the statutes to be teachers. Section 2(n) of the Bharathiyar University Act, 1981 defines the word "teachers" as lecturers, Readers, Assistant Professors, Professors and other persons giving instruction in University colleges or laboratories, in affiliated or approved colleges, or in hostels and Librarians as may be declared by the statutes to be teachers. Section 2(n) of the

Bharathidasan University Act, 1981 defines the word "teachers" as lecturers, Readers, Assistant Professors, Professors and other persons giving instruction in University colleges or laboratories, in affiliated or approved colleges, or in hostels and Librarians as may be declared by the statutes to be teachers. Section 2(10) of the Tamil Nadu Private Colleges (Regulation) Act, 1976 also defines the word "teachers" as Professors, Assistant Professors, Readers, Lecturers, Demonstrators, Tutors, Librarians and other like persons as may be declared to be teachers by the statutes framed under any law for the time being in force governing a University. In all the above enactments, the word "teacher" is defined either including the Librarian or as declared by the Statutes. Therefore, the object of the various University Acts appear to be that the post of Librarian is a research post and without which the department imparting education cannot effectively function and therefore only the post of Librarian is considered as teacher. Therefore, I do not find any justification to exclude the Librarian from the definition of teacher under the Tamil University Act, more particularly, with reference to the statute V(4) of Chapter XXVI of the statutes declaring the Librarian also as a teacher as empowered u/s 34-A of the Act.

13. In view of my above findings, both the impugned orders in effect declaring the petitioner as non-academic staff and excluding the post of Librarian from the definition of teacher cannot be sustained and consequently, the petitioner is entitled to succeed in both the writ petitions. Accordingly, both the impugned orders are set aside and the writ petitions are allowed. It is also made clear that the petitioner is entitled from the University all the service benefits attached to the post of teacher. No costs. Consequently, the connected W.P.M.P. is closed.