

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WA.No. 1341 of 2012 IN WP(C).15447/2007

AGAINST THE JUDGMENT IN WP(C) 15447/2007 of HIGH COURT OF KERALA DATED 25-05-2012

APPELLANTS/RESPONDENTS:

1. UNIVERSITY OF KERALA
THIRUVANATHAPURAM-695 034
REPRESENTED BY ITS REGISTRAR
2. THE SYNDICATE,
UNIVERSITY OF KERALA THIRUVANANTHAPURAM-695 034.
REPRESENTED BY ITS CHAIRMAN.
3. DEPUTY REGISTRAR (ADMN-I)
UNIVERSITY OF KERALA, THIRUVANANTHAPURAM-695 034

BY ADVS.SRI.GEORGE POONTHOTTAM, SC, KERALA UTY.
SRI.BECHU KURIAN THOMAS, SC, UNIVERSITY OF KERALA

RESPONDENT/PETITIONER:

DR.M.N.C.BOSE
DIRECTOR OF STUDENTS SERVICES, UNIVERSITY OF KERALA
THIRUVANANTHAPURAM-695 034

R1 BY ADV. SRI.C.P.SUDHAKARA PRASAD (SR.)
R1 BY ADV. SRI.S.RAMESH
R1 BY ADV. SRI.NAVEEN.T
R1 BY ADV. SMT.POOJA SURENDRAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 22-07-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

Writ Appeal No.1341 of 2012

Dated this the 22nd day of July, 2015

JUDGMENT

Antony Dominic, J.

Respondents in W.P(C)15447/07 have filed this appeal challenging the judgment of the learned Single Judge, holding that the post of Director of Students Services in the University of Kerala is a teaching post and that therefore the appointee was entitled to continue in service till the age of 60 years.

2. The facts which led to the filing of the writ petition are that the respondent herein is a graduate in Zoology and in Physical Education. Thereafter, he obtained Masters' Degree in Physical Education and also a degree in Law. He has also secured a Doctorate in Sports Management from the University of Kerala. He started his career as Lecturer in the Physical Education Department of Cochin College and was later appointed in the University of Kerala as Director of Physical Education. While continuing in that post, he was selected and was appointed to the post of Director of Students Services by Ext.P1 order dated 30.5.1994. He completed probation in that post and the same was declared by Ext.P2. By

Ext.P3, he was nominated as Advisor of Foreign Students. By Ext.P4, he was put in charge of Chief, University Employment Information Guidance Bureau and Career Information Centre, Thiruvananthapuram. Since the post of Director of Students Services is classified as a non teaching post in the Kerala University First Ordinances 1978, he was issued Ext.P16 informing that he was due to retire from the service of the University of Kerala on attaining 55 years with effect from 31.5.2007. Thereupon, he filed representation contending that his post is a teaching post and that therefore he was entitled to continue in service till he attains 60 years. His representation was rejected by Ext.P18. It was thereupon he filed writ petition challenging Exts.P16 and P18 and also for a declaration that he was entitled to continue as Director of Students Services of the University of Kerala till he attains the age of 60 years. There was also a prayer for a declaration that the inclusion of the post of Director of Students Services as a non-teaching post in the Schedule to the Kerala University First Ordinance is contrary to the provisions contained in the University Act and hence unconstitutional. Consequential reliefs were also prayed for.

3. Stand taken by the University was that considering the provisions of the University Act, the Kerala University First Ordinances, 1978 and the nature of the duties that are discharged by the respondent, the post of Director of Students Services is a non-teaching post. However, in the judgment under appeal, referring to Ext.P10, the Report of the Kothari Commission, the Schedule to the Kerala University First Ordinance, Ext.P22 experience certificate, Ext.P23 order containing the duties and functions of the Director of Students Services in the Mahatma Gandhi University, Ext.P27 judgment in W.A.2175/99 and Section 2(27) of the Kerala University Act defining 'teacher', the learned Single Judge held that the post of Director of Students Services is a teaching post. On that basis, the respondent was declared to be entitled to continue in service upto 60 years. However, taking note of the fact that his reinstatement in service would have affected the present incumbent, the learned Single Judge ordered that terminal benefit be paid to the respondent treating him as having continued upto 60 years and made it clear that he will not be entitled to any monetary benefits other than retirement benefits fixed as ordered in the

judgment. It is this judgment, which is challenged before us.

4. We heard the Standing Counsel for the appellants and the learned Senior counsel appearing for the respondent/writ petitioner.

5. While both sides reiterated the contentions that were urged before the learned Single Judge, the provisions of the Act, Ordinances and the various judgments produced were also referred. We have considered the submissions made.

6. It is true that the post of Director of Students Services was created on the basis of the Kothari Commission recommendations, the extract of which is Ext.P10. Paragraph 11.72 of the Report states that for the Administration of Welfare services, a full-time dean of students welfare to look after the implementation of programmes is needed and that Dean should be expected to participate in the academic work to the extent possible and regarded as a member of the academic community. Though it is recommended as above, the question whether the post is a teaching post or non teaching post, will have to be determined in the light of the statutory provisions contained in the University Act and the

Kerala University First Ordinances, 1978 and the nature of the duties that are discharged by the incumbent.

7. Section 2 of the Kerala University Act contains the definitions. Section 2(27) of the Kerala University Act defines 'teacher' 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. Reading of this provision shows that apart from the posts enumerated in the Section, others imparting instructions or supervising research in any of the recognised institutions and whose appointment has been approved by the University are also treated as teachers in the University Act. Section 2(13) defines 'non teaching staff' of the University or a college as the employees of the University or that college, other than teachers.

8. Chapter XVII of the University First Ordinances contains scales of pay, qualifications etc. of various posts in the University. Clause (1) prescribes the scale of pay for teaching posts and the posts enumerated therein are Professor, Reader, Lecturers/Research Officers and Research

Assistants/Instructor. Schedule to the Ordinance contains list of non-teaching staffs and among which at Sl.No.91 the post of Director of Students Services is included. Therefore, admittedly, having regard to the provisions of the University Act and the First Ordinance the University has classified the post Director of Students Services as a non teaching staff.

9. Question is whether the classification so made by the University, comes in conflict with the definition of teacher as contained in Section 2(27) of the University Act. As we have already stated, going by the definition of teacher as contained in Section 2(27), apart from Principal, Professor, Associate Professor, Assistant Professor, Reader, Lecturer and Instructor, such other person imparting instructions or supervising research in any colleges or recognised institutions and whose appointment has been approved by the University are also deemed to be teacher. The claim of the respondent is that though he does not fall in any of the categories such as Principal to Instructor enumerated in Section 2(27) or is supervising research, he falls within the expression such other person imparting instructions to the students

of the University. This contention of the respondent is sought to be substantiated by relying on Ext.P22, an experience certificate dated 6.1.2012 issued by the Registrar of the University. This certificate reads thus:

"This is to certify that Dr.M.N.C.Bose had been working as Director of Department Student Services in the University of Kerala in the pre revised scale of pay of Rs.16650-23200 with effect from 23.5.1994 AN to 31.5.2007 AN. He was also in charge of University Employment Information Guidance Bureau and Career Information Centre and Advisor of Foreign Students of the University of Kerala.

Being a non-teaching post, the incumbent in the capacity of Director of Student Service had undertaken the following activities:

- a) Students Welfare Schemes like Student Group Personal Group Insurance Scheme, Poor Students Scholarship.*
- b) Giving guidance to the Kerala University Union in organizing of the Kerala University Youth festival by giving training programme to students in the areas like literary, theater, music, dance and fine arts.*

As in charge of the University Employment Information Guidance Bureau and Career Information Centre he had organized the following activities of the Bureau.

- a) To register Post Graduate degree holders in general streams and Professional degree holders for employment assistance as and when suitable opportunities arise.*

b) to give employment information and advice to the University alumni.

c) to give information on various Courses of higher studies in India and abroad.

d) to collect and disseminate occupational information, information regarding scholarships, fellowships, training facilities, admission, etc.

e) to collect and disseminate Career Guidance literature, Magazine etc. to help students in their Career Planning.

f) to render vocational guidance to the students.

g) to collect, disseminate and provide information on competitive examination conducted by the various recruitment agencies.

h) to prepare Employment Guidance Bulletin to help students in their educational and Vocational Planning.

i) to maintain career information room in the Bureau.

j) to organize pre examination coaching class for competitive examination.

He had represented the University in the Indian Council for Cultural Relations, as the Advisor for the Foreign Students seeking admission and studying in the Kerala University. Being the Ex-officio member, he was the Vice-Chairman of Student's Council in the University. He was also a Member in the Board for "Adjudication of Students Grievances".

10. Reading of Ext.P22 certificate shows that even in this document, the University has clarified that the post held by the respondent is a non teaching post. It is also clear that in his capacity as Director of Students Services, the duties undertaken by the respondent are Student Welfare Schemes like Student Group Personal Group Insurance Scheme, Poor Students Scholarship and giving guidance to the Kerala University Union in organising the Kerala University Youth Festival by giving training programme to students in the areas like literary, theater, music, dance and fine arts. It is also stated that as in charge of the University Employment Information Guidance Bureau and Career Information Centre he had organised the activities as enumerated in (a) to (j). Learned counsel for the respondent mainly relied on the duty of the respondent in giving guidance to the Kerala University Union and in organising the Kerala University Youth Festival, which according to him, also includes imparting of training programmes to students in areas of literary, theater, music, dance and fine arts. He also referred us to the duties discharged by the respondent as in charge of the University Employment Information Guidance

Bureau and Career Information Centre. According to the learned counsel, to be a teacher of the University one need only be imparting instructions and as is evident from Ext.P22 respondent was imparting instructions.

11. Although it is true that going by the definition of teacher as contained in the Act imparting of instructions would suffice to classify a post as a teaching post which position has been accepted by this Court in the judgment in University of Kerala and Others v. Dr.K.K.Venu and Others [2014 (3) KLJ 425], question is whether the duties mentioned in Ext.P22 certificate would indicate that the respondent was imparting instructions. According to us, giving guidance to the University Union for organising University Youth Festival or giving training programmes to students in the areas of literary, theater, music, dance and fine arts would not amount to imparting of instructions to be a teacher as provided in Section 2(27). On the other hand, the duties discharged by the respondent as Director of Students Services in the Department of Students Services, according to us, are in the nature of administrative duties and are not academic duties as claimed by him. Similar is the

case with the additional duties discharged by the respondent as in charge of the University Employment Information Guidance Bureau and Career Information Centre.

12. It is true that the learned Senior Counsel placed reliance on Exts.P19, P20, P22, P27, P28 and P29 judgments to contend that various posts in the University similar to the post of Director of Students Services, have been held by this Court to be teaching posts. In so far as Ext.P19 is concerned, that was a case where the Director, Centre for Adult Continuing Education and Extension, University of Kerala, claimed his post to be a teaching post. Reading of the judgment itself shows that the learned Single Judge relied on Ext.P29 judgment and decided the case. Ext.P29 was rendered in a writ appeal filed by a person, who was previously the Director of the Centre for Adult Continuing Education and Extension of the University where this Court has held the post to be a teaching post. Paragraph 2 of Ext.P29 judgment shows that the appellant therein had produced before this Court a certificate issued by the Vice Chancellor himself certifying that he was teaching students of Post Masters Diploma in Adult Education Department. Therefore,

neither Ext.P29 decided on the strength of the materials produced before this Court nor Ext.P19 rendered relying on Ext.P29 can be of any help to the respondent to substantiate his plea that the post held by him was a teaching post.

13. Exts.P27 and 28 are judgments rendered by this Court in writ appeals and original petitions where 'Coaches' of the University of Calicut and Director of Physical Education claimed that their posts were teaching posts. Reading of these judgments show that considering the nature of the duties discharged by the coaches and also the judgments of the Apex Court in P.S.Ramamohana Rao v. A.P.Agricultural University (AIR 1997 SC 3433) these cases were decided. In so far as Ext.P20 judgment is concerned, that was a case where an Assistant Director, Centre for Adult Continuing Education and Extension of the University claimed that his post is a teaching post. Reading of the judgment shows that this Court has specifically found that the petitioner therein has been teaching for the regular courses of the University as well such courses offered by the Centre of which he was an Assistant Director. This Court has also taken note of Exts.P19 and P29 where the Directors

post was held to be a teaching post. These judgments cannot be of any help to the respondents.

14. Reliance was placed before us on Ext.P12, order of appointment issued by the Mahatma Gandhi University making an appointment to the post of Director of Students Services and it was contended that the Syndicate had resolved to treat the post as a teaching post. Reading of Ext.P12 which contains the functions of the Director shows that one of the functions he was to discharge was “doing academic work to the extent possible”. In so far as the respondent is concerned, apart from relying on Ext.P22 experience certificate and the arguments set up on Ext.P27 of the University Act he did not argue before us, leave alone the pleadings, that he is discharging any academic duties in the University.

15. For these reasons, we are satisfied that on the materials now made before us, conclusion of the learned Single Judge that the post of Director of Students Services is a teaching post entitling the incumbent to continue in service till the age of 60 years cannot be sustained.

For all these reasons, judgment under appeal is set aside and the writ petition will stand allowed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

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