

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).No. 34625 of 2003 (V)

PETITIONER(S):

**K. NARAYANANKUTTY NAIR,
S/O.LATE P. DAMODHARAN PILLAI,
AGED 67, BASKET BALL COACH (RETD.),
'KALA', KOLAKKATTUCHALI P.O.,
CHELEMBRA-673 634, BASKET BALL COACH (RETD.),
DEPARTMENT OF PHYSICAL EDUCATION,
UNIVERSITY OF CALICUT, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.P.R.VENKETESH,
SRI.L.RAJESH NARAYANAN,
SRI.MANU RAJ K.J.,
SRI.T.R.RAJAN,
SRI.K.T.SHYAMKUMAR,
SRI.HARISH R. MENON,
SRI.S.M.PRASANTH.**

RESPONDENT(S):

- 1. UNIVERSITY OF CALICUT,
REPRESENTED BY ITS REGISTRAR,
CALICUT UNIVERSITY P.O, MALAPPURAM DISTRICT.**
- 2. THE VICE CHANCELLOR,
UNIVERSITY OF CALICUT,
CALICUT UNIVERSITY P.O.,
MALAPPURAM DISTRICT.**
- 3. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE
GOVERNMENT, HIGHER EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.**

**R1 & R2 BY ADV. SRI.SANTHOSH MATHEW, SC.
R3 BY SR. GOVT. PLEADER SRI.ALOYSIUS THOMAS.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-01-2015, ALONG WITH WP(C). NO.22597 OF 2009 AND
WP(C).NO.2992 OF 2010, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE JUDGMENT DATED 26/09/2002 OF A DIVISION BENCH OF THIS HONOURABLE COURT IN W.A. NO. 2346/1999.
- EXT.P2 COPY OF THE PETITION DATED 27/11/2002 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P3 COPY OF THE ORDER BEARING NO.2088/F2/ADMN/97 DATED 19/12/2002 OF THE 1ST RESPONDENT.
- EXT.P4 COPY OF THE PETITION DATED 22/02/2003 SUBMITTED BEFORE THE FIRST RESPONDENT BY THE PETITIONER.
- EXT.P5 COPY OF THE PETITION DATED 04/04/2003 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.
- EXT.P6 COPY OF THE ORDER BEARING NO.FIN GB/11214/2000(1) DATED 14/03/2003 OF THE FIRST RESPONDENT.
- EXT.P7 COPY OF THE PETITION DATED 17/06/2003 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P8 COPY OF THE UGC SCHEME.
- EXT.P8 (IN I.A.NO.5204/2012) COPY OF THE ORDER DATED 30/01/2012 ISSUED BY THE 2ND RESPONDENT.
- EXT.P9 COPY OF THE CERTIFICATE DATED 31/12/1979 ISSUED BY THE BANGALORE UNIVERSITY TO THE PETITIONER.
- EXT.P10 COPY OF THE COMMUNICATION DATED 02/08/2011 ISSUED BY THE DEPUTY REGISTRAR (ADMINISTRATION) OF THE CALICUT UNIVERSITY.

RESPONDENT'S EXHIBITS:-

- EXT.R1A COPY OF THE LETTER OF THE AUDITOR NO.LR.CU.A4/6289/94 DATED 24/11/1994.
- EXT.R1B COPY OF THE DIVISION BENCH JUDGMENT IN W.A. NO.1851/2003(A) DATED 14/11/2003.
- EXT.R1C COPY OF THE MEMO NO.AD.F2/8201/95 DATED 04/09/1995 ISSUED TO THE PETITIONER BY THE UNIVERSITY.
- EXT.R3A COPY OF THE JUDGMENT DATED 14/11/2003 IN W.A. NO. 1851/2003.

//TRUE COPY//

ALEXANDER THOMAS, J.

=====

W.P.(C).Nos.34625/2003, 22597/2009 & 2992/2010

=====

Dated this the 12th day of January, 2015

J U D G M E N T

The main prayers and contentions in these Writ Petitions are broadly similar and for the sake of convenience I am initially dealing with the averments and documents referred to in W.P.(C).No. 34625/2003.

2. The petitioner, who retired as Coach from the Physical Education Department of the Calicut University on 30.6.1996 has approached this Court by filing Writ Petition with the prayers for writ of certiorari to quash the impugned Exts.P3 and P6 orders to the extent it rejects the claim of the petitioner for placement in the UGC scheme as Assistant Director of Physical Education (ADPE) and for mandamus to direct the respondents to pay arrears of salary to the petitioner by treating him as University teacher in the category concerned and fixing the pay scale of Rs. 2200–4000 till 1.9.86, Rs. 3000–5000 from 1.9.86 to 30.8.92, Rs.3700–5700 from 1.9.92 to 31.12.95 and Rs.12000–18300 from 1.1.96 to 30.6.96 etc. and for

mandamus to direct the 1st respondent University to pay the arrears of retiral benefits to the petitioner, treating him as University teacher (Selection Grade) and fixing the pay scale at the time of retirement at Rs.12000–18300 etc. There is also an alternate prayer as per prayer (e) thereof seeking a writ of mandamus to direct the 1st respondent University to grant second higher grade to the petitioner with effect from 1.9.1990 on completion of 20 years of service and grant arrears of salary and fix the pay scale at the time of retirement treating him as University teacher accordingly and grant the arrears of retiral benefits etc.

3. The broad factual details of the case are as follows. The question as to whether the post of Coach in the respondent University is a non-teaching post or a teaching post was agitated before this Court in some litigations. The University took the stand that the post of Coach is a non-teaching post and accordingly included the said post in the relevant schedule of the University Ordinances relating to the non-teaching post. The persons similarly situated like the petitioner contended that the main duties and responsibilities attached to the post of Coach involved imparting

instructions to students and hence would fulfill the definition of 'teacher' as defined in Section 2(27) of the Calicut University Act and that, therefore, the post of Coach is essentially a teaching post and that therefore the age of superannuation will be 60 years as in the case of all teaching post and that the University is erroneously insisting that age of superannuation of Coaches shall be 55 on the wrong premise that the post of Coach is a non-teaching post etc. The petitioner approached this Court earlier by filing O.P.No.6337/1991 for ventilating his grievances in this regard for treating him as a teaching staff of the University. On the dismissal of O.P.No. 6337/1991 the petitioner filed Writ Appeal, W.A.No.2346/1999, wherein the Division Bench by Ext.P1 judgment rendered on 26.9.2002 found that the main duties and responsibilities attached to the post of Coach is to impart instructions to students and that therefore it is a teaching post within the meaning of Section 2(27) of the Calicut University Act. The above finding was made by the Division Bench by mainly relying on the judgment of the Supreme Court rendered in the case between P.S.Ramamohana Rao v. A.P.Agricultural University and

another, reported in 1997 (8) SCC 350 = AIR 1997 SC 3433, wherein the Apex Court considered a similar provision in Section 2 (n) of the Andhra Pradesh Agricultural University Act 1963 relating to the definition of 'teacher' in Section 2(n) thereof. By elaborate consideration of the issue, the Apex Court in P.S.Ramamohana Rao's case held that post of Physical Director in the Andhra Pradesh Agricultural University essentially carries the duties and responsibilities of imparting instructions and therefore the said post is a teaching post and that persons holding such post are entitled to continue in service upto the prescribed superannuation age for teaching staff of the University etc. In this view of the matter, the Division Bench in the judgment in W.A.No.2346/1999 (Ext.P1) held that the post of Coach held by the petitioner in the Physical Education Department of the respondent Calicut University is a teaching post and hence such personnel can continue in service upto the superannuation age of 60 years prescribed for teaching staff. The petitioner thereafter represented to the University authorities for complying with Ext.P1 judgment and for granting all consequential benefits arising from the said judgment. The

University, by Ext.P3 proceedings dated 19.12.2002, decided to implement the directions in Ext.P1 judgment by reckoning that the superannuation age of the petitioner to 60 years as in the case of teaching staff and consequential pay benefits attached to the post of Coach were disbursed. The petitioner's request for placement in the UGC scheme in the post of Assistant Director, Physical Education and above had been repelled by the respondent University. The petitioner has thereafter represented before the University on many occasions for the grant of the claimed benefit of placement in the UGC scheme and also for grant of the denied second higher grade in the post of Coach etc.

4. The sheet anchor of the case of the petitioner is that the post of Coach has been declared by this Court to be a teaching post and hence he is entitled to not only for the benefits of superannuation age and related pay benefits and retirement benefits attached to the post of Coach by treating him in the category of teaching post, but also the pay arrears arising out of placement in the UGC scheme in the category of Assistant Director of Physical Education etc.

5. It is true that the post of Coach in the Physical Education Department of the respondent-Calicut University is a teaching post in the light of the declaration of law made by this Court in W.A.No.2346/1999 and connected cases as well as in the judgment of the Apex Court in P.S.Ramamohana Rao's case reported in (1997) 8 SCC 350. The University has complied with the said Division Bench judgment of this Court by allowing them to continue in service upto the superannuation age of 60 and by granting them pay benefits and retiral benefits in the post of Coach. The main question that arises for consideration is as to whether an incumbent holding the post in the category of Coach in the Physical Education Department of the respondent University is ipso facto entitled to be automatically placed in the UGC scheme in the appropriate category of post covered by that scheme. The respondent-University and the State Government have filed counter affidavits resisting the claims and contentions of the petitioner. Both the respondents have averred that the post of Coach has been treated as a teaching post, but the said post is outside the purview and scope of the UGC scheme as notified by the University Grants Commission and as

introduced by the Government of Kerala. The full text of the UGC scheme introduced as per G.O(P) No.171/99/HEdn. dated 21.12.1999 has been produced by the petitioner as Ext.P8 through an additional affidavit. A perusal of Ext.P8 UGC scheme makes it evidently clear that the post of Coach is indeed outside the purview of the UGC scheme. It is true that in clause 6.12 of Ext.P8 UGC scheme dealing with the category of the post of Lecturer, the Government has included Physical Education also as one among the various disciplines apart from Humanities, Social Sciences, Sciences, Commerce etc. Appendix IA of Ext.P8 deals with the categories of Lecturer, Lecturer (Senior Scale), Lecturer (Selection Grade), Reader, Professor etc. and existing UGC scale of pay and revised scale of pay are also adumbrated therein. Appendix 1D of Ext.P8 UGC scheme especially categories 1 to 5 therein explicitly enumerates category of posts of Assistant Director of Physical Education, Assistant Director of Physical Education (Senior Grade), Assistant Director of Physical Education (Selection Grade), Deputy Director of Physical Education and Director of Physical Education etc. A perusal of Appendix IA and Appendix 1D of Ext.P8 would make it clear that the posts in the

Physical Education Department of colleges and University Departments could either be designated as Lecturer, Lecturer (Senior Grade), Lecturer (Selection Grade), Reader, Professor etc. or as Assistant Director of Physical Education etc. stated above. This is clear from the pay scale which are mentioned as existing UGC scale of pay and revised UGC scale of pay shown in Appendix IA and Appendix ID of Ext.P8. The impact of this is that the University could either style the posts as Lecturer, Reader or Professor etc. or as Assistant Director, Deputy Director, Director of Physical Education etc. The qualifications required for the post of Lecturer/Assistant Director of Physical Education as per Ext.P8 are good academic record with at least 55% of the marks or an equivalent grade of B in the 7 point scale with latter grades, O, A, B, C, D, E & F at Master's degree level in the relevant subject from the Indian University, or an equivalent degree from a foreign University and that besides fulfilling the above qualifications, the candidates should have cleared the eligibility test (NET–National Eligibility Test) for Lecturers conducted by the UGC, CSIR or similar test accredited by the UGC. The qualifications to be fulfilled for getting placement

as Lecturer (Senior Scale) and Lecturer (Selection Grade) are dealt with in clauses 6.5 and 6.26 of Ext.P8. The qualifications and conditions required to be fulfilled for promotion as Reader and Professor are dealt with in clauses 6.27 and 6.29 of Ext.P8 UGC scheme. One should complete not less than five years in the Senior Scale Lecturer and should have obtained a Ph.D degree or has equivalent published work in order to become a Reader apart from certain other conditions mentioned therein. The qualifications and conditions for promotion as Professor are also delineated in clause 6.29 of Ext.P8. Nowhere in Ext.P8 UGC scheme, is the post of Coach seen included. There is no provision in Ext.P8 or in the statutes or Ordinances framed by the respondent–University that the post of Coach is a feeder category for promotion or by transfer appointment to the post of Assistant Director of Physical Education. The qualifications for appointment to the post of Coach as per the schedule to the Calicut University First Ordinances, 1978, are

(a) Essential: Certificate from National Institute of Sports (2nd Class – ten months' course) in the particular game. In the case of outstanding sportsman who represented the nation, a pass in the Ad hoc course conducted by the National Institute of Sports will be accepted. The candidates who have

undergone specialized training or a period of one year or more in a recognised institution will also be considered. Desirable: Diploma in Physical Education.”

The minimum qualifications thus prescribed by the respondent University to hold the post of Coach is only a certificate from the National Institute of Sports in 2nd Class – 10 months' course in the particular game concerned and for outstanding sportsman, a pass in the ad hoc course conducted by the National Institute of Sports is also sufficient. Diploma in Physical Education is only envisaged as a desirable qualification and not as a mandatory qualification, whereas for the post of Assistant Director of Physical Education in the respondent University, the minimum prescribed qualification is Master's Degree in Physical Education with good academic record with at least 55% marks or equivalent and the candidate should also have cleared the National Eligibility Test (NET) conducted by the UGC or such other similar UGC accredited test. True that the petitioner and some of the petitioners in the connected Writ Petitions are having Master's Degree in Physical Education and some of them may even be having doctorate degree. But that is totally outside the relevant area of consideration as far as this particular issue is concerned. The issue is as to whether this is the minimum

qualification required to hold the post. If the petitioner could have established that the minimum prescribed qualification to hold the post of coach is substantially the same as that prescribed for the post of Assistant Director of Physical Education, they could have crossed the threshold limit of the field for serious consideration of this claim. A perusal of the qualifications prescribed for the post of Coach and the minimum qualification prescribed for the post of Assistant Director of Physical Education, Deputy Director of Physical Education and Director of Physical Education would make it clear that the post of Coach is substantially inferior in rank and status to even the post of Assistant Director of Physical Education going by the minimum qualification prescribed to hold the post etc. Merely because some of the petitioners may have Master's Degrees or Doctorate degree, they cannot automatically seek placement in the UGC scheme in the pay scale attached to the category of Assistant Director of Physical Education unless they can convincingly establish before this Court that the post held by them prior to the introduction of Ext.P8 scheme was equivalent to the category of Assistant Director of Physical Education, going by the prescribed

minimum qualifications, etc.

6. The respondent Calicut University has filed an affidavit dated 8.12.2011 in W.P.(C).No. 34625/2003. It is stated by the respondent University in the said affidavit that persons like the petitioners are not entitled for promotion because there is no promotion from the post of Coaches. That the petitioner in that W.P. (C). was appointed as Athletic Coach in the University in 1970 and when he was so appointed, he had only the minimum qualification prescribed for the post of Coach, viz., coaching certificate in Basket Ball from the National Institute of Sports, Patiala. It is further stated therein that any acquisition of any additional academic qualification does not create any vested right on the incumbents like the petitioner for the benefit of UGC scheme. That the UGC scheme is applicable only to the post of Assistant Director of Physical Education and that the petitioner is not having the qualification prescribed for the post of Assistant Director of Physical Education at the time of entry into service. That Masters degree in Physical Education or equivalent qualification prescribed as the minimum qualification is not the only qualification prescribed for the post of Assistant

Director of Physical Education, but there are three more criteria prescribed in respect of the minimum qualification. That the post of Coach in the University service has not been brought under the UGC scheme and the qualification fixed for the post of coaches is far below the post of Lecturers in the UGC Scheme and that as per para 3.1 of Ext.P-8, the revised UGC Scheme 1998 will be restricted to those categories of staff only who were brought under the UGC Scheme 1986 and that without specifically being brought under the purview of the UGC scheme, incumbents holding the post of Coach in the University in general or the petitioner in particular are not entitled to the benefit of UGC scheme. Paragraph 7 of the said affidavit deals with the qualification prescribed for the post of Coach and paragraph 8 of the said affidavit deals with the qualifications prescribed for the post of Assistant Director of Physical Education and higher posts as per the UGC scheme. Paragraphs 7 and 8 of the above said affidavit of the respondent University read as follows:

“7. The qualification of a University Coach is

(a) Essential: Certificate from National Institute of Sports (2nd Class 10 months course) in the particular game. In the case of outstanding sportsman who has represented the nation, a pass in the

Ad hoc course conducted by the National Institute of Sports will be accepted. The candidate who have undergone specialized training or a period of one year or more in a recognized institution will also be considered. Diploma in Physical Education is desirable.

8. The qualification for the post of Assistant Director of Physical Education and higher posts are as follows:

(a) University: Assistant Director of Physical Education and Sports/College DPEs (Lecturer-scale)

- (i) Master's degree in Physical Education (Two years course) or Master's degree in Sports or an equivalent degree with at least 55% of the marks or its equivalent grade of B in UGC 7 point scale plus a consistently good academic record.
- (ii) Record of having represented the university/college at the inter-university/inter collegiate competitions or the State in national championships.
- (iii) Passed the physical fitness test.
- (iv) Qualifying in the national test conducted for the purpose by the UGC or any other agency approved by the UGC.

(b) University: Assistant DPEs/College DPEs (Senior-scale)

- (i) Should have completed six years of service as University Assistant DPEs/College DPEs with a benefit of two years for Ph.D. and one year for M.Phil. Degree holders.
- (ii) Passed by the physical fitness test.
- (iii) Consistently good appraisal reports.
- (iv) Should have attended at least one orientation and one refresher course of about three to four weeks' duration each with proper and well-defined evaluation procedure (exemption from one refresher course is granted to Ph.D. Degree holders).

(c) University: Assistant DPEs/College DPEs (Selection-grade).

- (i) Completed five years of serviced as University Assistant DPEs/College DPEs in the senior-scale.
- (ii) Has attended at least two refresher courses of about three-four weeks' duration with proper and well-defined evaluation

procedure after placement in the scale of Rs.3000–5000.

- (iii) Shown evidence of having produced good teams/athletes and of having organized and conducted coaching camps of at least two week's duration.
- (iv) Passed the physical fitness test.
- (v) Consistently good appraisal reports.

(d) University Deputy DPEs/College DPEs (Reader's scale)

- (i) Ph.D. in physical education. Candidates from outside the university system, in addition, shall also possess at least 55% of the marks or an equivalent grade of B in the UGC 7 point scale at the Master's Degree level.
- (ii) Five years' experience as University Assistant DPEs/College DPEs, with a benefit of two years and one year for Ph.D. and M.Phil Degree holders.
- (iii) Evidence of organizing competitions and conducting coaching campus (sic) of at least two weeks' duration.
- (iv) Evidence of having produced good performance teams/athletes for competitions like state/national/inter university/combined university, etc.
- (v) Passed the physical fitness test.
- (vi) Consistently good appraisal reports.

(e) University DPEs

- (i) Ph.D. in physical education.
- (ii) Experience of at least ten years as University Deputy or fifteen years as University Assistant DPEs/College DPEs (selection grade)
- (iii) Participation in at least two national/international seminars/conferences.
- (iv) Consistently good appraisal reports.
- (v) Evidence of organizing competitions and conducting coaching camps of at least two weeks' duration.

- (vi) Evidence of having produced good performance teams/athletes for competitions like state/national/inter university/combined university etc.”

It is further stated in paragraph 9 of the affidavit that the petitioner has not fulfilled the UGC stipulations and therefore he will not be eligible for the UGC pay scales even if he is considered as a teacher of the respondent University. That as per Ext.P-1 judgment, the Division Bench of this Court has only directed the University to continue to treat his superannuation age in the service as 60 years as a teacher of the University and to compute his retiral benefits as if he had validly continued till the age of 60 years as in the case of teachers and that this Court in the said judgment has not passed any direction directing the University to grant UGC pay scales for coaches. It is further stated in paragraph 12 of the said affidavit that the post of Coaches is not having any further promotion and hence they are given higher grades. Whereas the post of Assistant Director of Physical Education as per the UGC scheme has further promotion prospects as ADPE (Senior Grade), ADPE (Selection Grade) and Deputy Director of Physical Education as per UGC Scheme. That the pay of the petitioner was coincided with that of the Superintendent

of the University Press, when his pay was fixed accordingly as per rules. That the petitioner is not holding the post of ADPE and that the appointment of the ADPE in the University is made through direct selection and that the petitioner has never applied for the post of ADPE nor was he considered for the said post and that the petitioner has never been appointed as ADPE. It is further stated in paragraph 16 of the said affidavit that the petitioner was given the first time bound higher grade on completion of ten years in the post of Coach and his pay was fixed at Rs.2,220/- with effect from 1.9.1983 (1983 pay revision scale of pay of Rs. 1300-2725). That while considering his request for Second Higher Grade along with other coaches, the Government Audit vide letter No.LF.CU/A4/6289/94 dated 24.11.1994 strongly opposed to it by stating that as the scale of pay prescribed for 20 years grade in the 1988 pay revision order is already enjoyed by the University coaches, no further scale of pay can be sanctioned to them without violating the principles for grant of grades prescribed in the pay revision order. That the petitioner was informed as per Ext.R-1(c) memo No.Ad.F2/8201/95 dated 4.9.1995 that the eligible second higher

grade of coaches is only Rs. 1830–3425, but then the petitioner was drawing the scale of pay of Rs. 2070–3050 according to 1988 pay revision and hence higher grade could not be granted from higher scale of pay to a lower scale of pay. It is accordingly stated by the respondent University in their pleadings that the persons like the petitioner are not entitled to the benefit of the placement in the UGC scheme produced as Ext.P–8 in W.P.(C).No. 34625/2003, etc. The issue relating to the claim for UGC scale of pay in the post of ADPE is common in all these cases. Therefore, the first issue to be decided is as to whether incumbents like the petitioners, who are holding the post of Coaches in the respondent University are entitled for pay scales as per UGC scheme and the consequent pay arrears thereon as claimed by them in these Writ Petitions, on the premise that they are to be treated as teachers of the University in view of the Division Bench judgment of this Court in W.A.No.2346/1999 and the decision of the Apex Court in P.S.Ramamohana Rao v. A.P.Agricultural University and another, reported in 1997 (8) SCC 350.

7. Heard the learned Advocates appearing for the various Writ Petitioners as well as the learned Standing Counsel for the

respondent– Calicut University and the learned Government Pleader appearing for the respondent–State of Kerala.

8. The issue in this regard is almost covered against the petitioners as per the decision of the Apex Court in the case State of Madhya Pradesh and others v. Ramesh Chandra Bajpai reported in (2009) 13 SCC 635. In the said case the respondent therein was appointed as Physical Training Instructor as per the Ministerial Services Recruitment Rules, 1987 (“the 1987 Rules”) and he had approached the Tribunal concerned with the prayer for directions to treat him as teacher and fix his pay in the scale of pay prescribed for the post of teacher along with the benefit of senior scale and also give him the UGC pay scale with effect from 1.1.1986. It was opposed by the respondent authorities with the plea that the UGC scales have not been made applicable as far as the incumbents covered by the Ministerial Services Recruitment Rules, 1987 and that the applicant therein could not have been treated on par with teachers. The Tribunal dismissed the application on the ground that the petitioner had not been holding the post of Sports Officer, which is covered by the Collegiate Educational Service (Collegiate Branch)

Recruitment Rules, 1990 and therefore he was not entitled to the claimed benefit of UGC scale of pay. The petitioner approached the High Court concerned and a learned Single Judge allowed the Writ Petition relying upon the decision of the Apex Court in P.S.Ramamohana Rao v. A.P.Agricultural University and another, reported in 1997 (8) SCC 350 and directed the authorities to fix the pay of the petitioner therein in the scale of pay for the post of teacher. The appeal was preferred as against the said judgment and the Division Bench dismissed the Writ Appeal and thereupon the matter was taken up before the Apex Court, which resulted in the above said decision reported in State of Madhya Pradesh and others v. Ramesh Chandra Bajpai reported in (2009) 13 SCC 635. The Apex Court found in paragraph 11 thereof that the post of Physical Training Instructor is regulated by the Ministerial Services Recruitment Rules, 1987, as per which, the minimum prescribed qualification to hold the said post is the requisite educational qualification of Diploma in Physical Training, whereas the post of Sports Officer, which is covered by the UGC scheme, was included in a separate sets of rules viz., the Collegiate Education Service

(Collegiate Branch) Recruitment Rules, 1990, which is to be filled up by 90% direct recruitment and 10% by promotion from amongst Assistant Sports Officers and the educational qualification prescribed for direct recruitment to the post of Sports Officer is post graduate degree in Physical Education with at least 55% marks and at the degree level of Physical education, the percentage of total marks obtained should not be less than 50%. The Apex Court held in para 13 thereof that a comparison of the 1987 Rules and the 1990 Rules clearly establishes that those separate set of rules not only deal with different classes of employees, but the education qualifications and scales of pay prescribed for the posts enumerated in the Schedules of two sets of Rules are entirely different. The Apex Court held in paragraph 15 of that judgment that the approach of the High Court in that case was clearly erroneous and that while considering the doctrine of equal pay for equal work, the same can be invoked only when the employees are similarly situated and mere similarity in the designation or nature or quantum of work is not determinative of the equality in the manner of pay scales and that the court has to consider the factors like the source and mode of

recruitment/appointment, qualifications, nature of work, value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. and that in other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts. The Apex Court relied on the judgment in Govt. of West Bengal v. Tarun K. Roy reported in (2004) 1 SCC 347, para 14, wherein it was held that holders of higher educational qualifications can be treated as a separate class and that even employees performing similar job but having different educational qualifications can thus be treated differently. Further, it was held by the Apex Court in paragraphs 22 to 26 that merely because the Apex Court has held in P.S. Ramamohana Rao's case supra that though the post of Physical Education Director is a teaching post, it will not lead to grant of the UGC scale of pay to the post of Physical Training Instructor and that the ratio decidendi of P.S. Ramamohana Rao's case supra has been misapplied and misconstrued by the High Court in Ramesh Chandra Bajpai's case supra and that it is a well settled principle of law that a decision is an authority for what it decides and not what can logically be deduced

therefrom. That in Ramamohana Rao's case *supra*, the Apex Court having regard to the nature of duties and functions of Physical Director, held that the post comes within the definition of teacher as contained in the University enactment concerned and that the said proposition laid down in that case should not have been automatically extended to other cases like the present one, for the claim of UGC scale of pay etc.

9. It is true that in the instant case the post of Coach is to be treated as a teaching post in view of the Division Bench judgment of this Court in W.A.No.2346/1999 and the ruling of the Apex Court in P.S.Ramamohana Rao's case *supra*. But the minimum prescribed qualification for the post of Coach held by the petitioners is only certificate from the National Institute of Sports (2nd Class 10 months course) in the particular game, etc. In order to claim the benefit of UGC scale of pay, it has to be established that the incumbent has been holding the post of Assistant Director of Physical Education or any of the higher posts as contained in the UGC scheme produced as Ext.P-8. The minimum prescribed qualification to hold the post of Assistant Director of Physical Education is two years Master's

degree in Physical Education or Master's degree in Sports or an equivalent degree with at least 55% of the marks or its equivalent grade, etc. and record of having represented the University/college at the inter- University/inter collegiate competitions or the State in National championships, should have passed the physical fitness test and should have passed and qualified in the National test conducted by the UGC etc. Further, the conditions and qualifications for promotion as ADPE (Senior Scale), ADPE (Selection grade) Deputy Director of Physical Education Director, etc. have already been dealt with in the earlier portion of this judgment. The petitioners have not been appointed as Assistant Director of Physical Education and there is no provision to confer the benefit of UGC Scale of pay to the post of Coach as per the above said UGC scheme provisions. In view of these aspects, the prayer of the petitioners for the grant of UGC scale of pay in the post of Assistant Director of Physical Education and the higher post therefrom cannot be granted and the same is only to be rejected.

10. However, apart from the abovesaid main common prayer rejected above, there are other important matters arising in these

cases, especially from the pleadings in W.P.(C).No.2992/2010. It is fully accepted by the University in all the pleadings that there are no promotional avenues for the post of Coach. It is further admitted by the University that though that University Ordinances had classified the post of Coach as a non-teaching post, for which the age of retirement was 55 years, in view of the Division Bench judgment of this Court rendered in W.A.No. 2346/1999 on the basis of the Apex Court ruling in P.S.Ramamohana Rao's case supra, the University has since then treated the post of Coach as a teaching post and the result that the retirement age of the incumbents holding the post of coaches is upto 60 years as in the case of teachers of the respondent University. The entire service conditions including the time bound higher grades, pay revision earlier formulated for the post of Coach by the respondent University is on the premise that the post of Coach is a non-teaching post with the retirement age of 55 years, whereas in law especially in view of the above said judgment of the Division Bench and in the above said ruling in P.S.Ramamohana Rao's case supra, the post of Coach is a teaching post with the retirement age of 60 years. The problems of stagnation

of the incumbents in the post of Coach have not been dealt with reasonably and effectively by the University or the Government till date and even the benefit of time bound higher grades for the post of Coach has been conceived on the premise as if the post of Coach has the retirement age of 55 years.

11. It would be pertinent to refer to the relevant averments and contentions in this regard raised in W.P.(C).No. 2992/2010. The said Writ Petition has been amended and the amended Writ Petition has also been filed. It is stated therein that as per Ext.P-2 order dated 19.12.2002, the benefit of superannuation age of 60 years as in the case of University teachers has been extended to coaches in the University and benefits in this regard were also granted except that of the pay scale as per the UGC norms, arrears thereof, promotions, annual increments, terminal surrender of earned leave, etc. The coaches had further requested for revision of their pay as per the UGC pay scale on the premise that they are to be treated as teachers of the University and had also requested for second higher grade on completion 20 years of service/18 years of service as applicable. Thereupon, the respondent University ordered to

constitute a sub committee of the Syndicate to examine the service matters with regard to the pay scale, surrender of earned leave, etc. in the light of the aforementioned aspects. The Syndicate sub committee recommended to grant pay scales to the coaches at Rs. 8250-13,650/- (1997 revision) on completion of 10 years of service and at Rs. 10,000-15,150/- (1997 revision) on completion of 20 years of service as per the rules of 1992 pay revision and on completion of 18 years as per the rules of 1997 pay revision. The pay was directed to be notionally fixed as per the above scale of pay with effect from 1.3.1992 and the monetary benefits as per the above fixed scale of pay were ordered to be obtained with effect from 1.3.1997 and those who retired on superannuation during this period was to get pensionary benefits as per the fixation based on the scale proposed. The recommendation of the Syndicate sub committee was placed before the sub committee on staff for consideration and the staff sub committee decided to refer to the standing committee of the Syndicate. It was referred later to the statutory finance committee, which resolved to accept the recommendations of the sub committee of the Syndicate. The

recommendations of the statutory finance committee were placed before the syndicate and the syndicate vide their decision dated 3.9.2005 considered the recommendation of the statutory finance committee and resolved to enhance the scale of pay of coaches as recommended by the statutory finance committee. Accordingly, the University issued orders as per Ext.P3(a) U.O.No. Ad.F2/7231/91.Vol.II dated 27.10.2005, whereby the above said syndicate decision was ordered to be implemented and it is ordered in para 7 of Ext.P-3(a) dated 27.10.2005 as follows:

- “(1) Scale of pay of Coaches is enhanced as Rs.2650-75-2800-100-4200 (pre-revised) i.e, Rs.8250-250-9250-275-13650 (revised in 1997) on completion of 10 years of service Rs.3000-100-3500-125-5000 (pre-revised) i.e, Rs.10000-300-10600-325-15150 (revised in 1997) on completion of 20 years of service as per the rules of 1992 pay revision and on completion of 18 years as per the rules in 1997 pay revision.
- (2) The pay will be notionally fixed as per the above scale of pay with effect from 1.3.1992.
- (3) The monetary benefits as per the above fixed scale of pay will be obtained only with effect from 1.3.1997.
- (4) Those who retired on superannuation during this period shall get the pensionary benefit as per the fixation based on the scales proposed.
- (5) The Finance Branch will fix the pay of the incumbents accordingly.
- (8) (sic) Orders are issued accordingly.”

12. Later as per Ext.P3(b) U.O. dated 30.5.2006 the benefit

of Ext.P-3(a) was ordered to be granted to the petitioner in W.P.(C). No. 2992/2010. It appears that the benefits sanctioned as per Ext.P-3(a) U.O. dated 27.10.2005 was subjected to audit by the Deputy Director of Local Fund Audit as per Ext.R-2(d) dated 31.8.2006 [produced in W.P.(C).No.2992/2010], wherein the only objection taken by the Deputy Director of Local Fund Audit is that the decision of the respondent Calicut University as per Ext.P-3(a) U.O. dated 27.10.2005 is irregular as it is rendered in the absence of the formal assent of the Chancellor. It appears that thereupon the respondent University referred the matter to the Government as per Ext.R-2(e) dated 27.2.2007. The State Government as per Ext.R-2(f) dated 25.1.2008 took up an altogether new objection stating that the benefit sanctioned by the respondent University as per Ext.P3(a) U.O. dated 27.10.2005 is not in accordance with the norms in Ext.R-2(b) order dated 31.1.1994 issued by the Calicut University. No objection is taken by the State Government in Ext.R-2(f) dated 25.1.2008 that the decision taken in Ext.P-3(a) U.O. dated 27.10.2005 is bad for want of assent of the Chancellor as pointed out by the Deputy Director of Local Fund Audit in Ext.R-2(d) dated

31.8.2006. Ext.R-2(b) order dated 31.1.1994 of the Calicut University is in the matter of pay fixation for various non-teaching posts in the Calicut University. Therefore, the norms in Ext.R-2(b) dated 31.1.1994 are framed on the premise that the superannuation age of the incumbents covered by Ext.R-2(b) is only upto 55 years of age. It is clearly stated in paragraph 3 of Ext.R-2(b) dated 31.1.1994 that the orders therein are issued with regard to revision of pay scales and allied matters in respect of University employees other than University teachers, library staff coming under the UGC scheme and those under the UGC schemes and projects. Therefore, the ways and means of ameliorating the effects of stagnation prospects and such other issues in non-teaching posts, for which the incumbents could continue in service only upto the age of 55 years, are not really relevant and germane as far as the post of Coach is concerned in which the incumbents could continue upto the age of 60 years as in the case of University teachers due to the aforementioned judicial intervention. The University files in relation to Ext.P-3(a), Ext.R-2(d), Ext.R-2(e) and impugned Ext.P-4 U.O. 28.5.2009 were made available to this Court. Based on the opinion

of the Government in Ext.R-2(f) dated 25.1.2008, the respondent University issued the impugned Ext.P-4 dated 28.5.2009. Thereby, the University ordered to cancel the benefits sanctioned as per Ext.P-3(a) U.O. dated 27.10.2005. The State Government in Ext.R-2 (f) dated 25.1.2008 has no case that Ext.P-3(a) is bad for any want of assent of the Chancellor as pointed out by the Deputy Director of Local Fund Audit in Ext.R-2(d) dated 31.8.2006 and the only objection taken in Ext.R-2(f) of the State Government is that the benefits granted in Ext.P-3(a) are not in accordance with the earlier order of the University, as per Ext.R-2(b) dated 31.1.1994.

13. The petitioner in W.P.(C).No. 2992/2010 has also pointed out that one Abdul Rasheed, who was Instrumentation Engineer in the respondent University was granted the rank and emoluments as a University Professor in recognition of his meritorious service in the University as per Ext.P-6 order dated 4.8.2003 issued by the respondent University. It is further averred that one Sri.Parameswaran, who was Reader of Library Science in the respondent University was promoted as Professor in the UGC scheme as per Ext.P-7 order dated 21.2.2004. That the petitioner

has all the qualifications to be appointed as the Director of Physical Education and that the University should have considered his appointment as Director of Physical Education taking into account his qualifications and career record etc. That several other coaches have been granted advance increments as per Ext.P-8 series. That several other benefits like terminal surrender, earned leave, etc. have not been granted, even though other incumbents have been given as per Ext.P-10, etc. In the light of these averments and contentions the petitioner in W.P.(C).No. 2992/2010 has sought the prayers not only for grant of pay scales in the UGC scheme as in the case of University teachers but also for direction to constitute a committee to evaluate the career of the petitioner and assess and credit to his service benefits.

14. The petitioner has also sought the amended prayers to quash the impugned Ext.P-4 order and for direction to grant the second time bound higher grade as envisaged in Ext.P-3(a) and for direction to appoint him as Director of Physical Education and for directions to grant increments at the rate of one advance increment for each victory at the All India Inter University Championships, etc.

15. It is clearly admitted by the respondent University that there are no promotional avenues for the post of Coach and that they are not being considered for any types of promotions other than the time bound higher grades. It is also admitted by the respondent University in their statement dated 7.4.2014 filed in W.P. (C).No. 2992/2010 that the post of Coach is included in the Calicut University First Ordinance 1978 and that the last appointment to the category of Coach was made in September, 1980 and thereafter, the University has appointed coaches only on contract basis in the Department of Physical Education. Thus it is evident that the post of Coach is almost a vanishing category and no regular appointment has been made to the post of Coach after September, 1980. Almost all the regular incumbents to hold the post of Coach including the Writ Petitioners herein have retired from service on superannuation. Therefore, the issue of career advancement and promotion prospects has to be considered in the light of the various legal principles laid in that regard by the Apex Court.

16. In the case Dr.O.Z.Hussain v. Union of India, reported in 1990 (Supp) SCC 688, p.p.691 and 692, para 7, the Supreme Court

has held as follows:

“7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical ‘A’ Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the ‘A’ category scientists in the non-medical wing of the Directorate.”

In the light of the above said principles, the Apex Court in Dr.O.Z.Hussain's case supra allowed the said Writ Petition and issued the following directions:

“8. This writ petition is allowed and the following directions are issued:

- (1) Within four months from today, the Ministry of Health and Family Welfare of the Union of India shall frame a set of appropriate rules, inter alia, providing suitable promotional avenue for the ‘A’ Group scientists in the non-medical wing of the establishment of Director General of Health Services;
- (2) These ‘A’ Group scientists shall be entitled to book allowance, higher degree allowance, risk allowance and conveyance allowance at the same rate as is admissible to doctors in the medical wing in the Directorate w.e.f. April 1, 1989;
- (3) Government shall examine the tenability of the claim of equal pay scales for this category of officers within four months from today.”

17. In the case Council of Scientific and Industrial Research and Anr. v. K.G.S.Bhatt and Anr. reported in (1989) 4 SCC 635, p.p.638, 639, para 9, the Apex Court held as follows:

'9. That then is the scope of Bye-law 71(b)(ii). But that does not mean that we should interfere with the relief granted to Respondent 1. By pointing out the error that crept into the decision of the Tribunal, we need not to take to its logical end which will defeat justice. Respondent 1 is not a layman. He is a highly qualified engineer. Although he joined service with a diploma in engineering, he later-passed Bachelor of Engineering (BE) and also acquired M. Tech. degree and one more diploma (DPM). He was however, left without opportunity for promotion for about twenty years. This is indeed a sad commentary on the appellant's management. It is often said and indeed, adroitly, an organisation public or private does not "hire a hand" but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors." There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions. The appellant appears to have overlooked this basic requirement of management so far as Respondent 1 was concerned till NR & AS was introduced.'

Similar view was also taken in the Apex Court ruling in UJAGAR PRINTS AND OTHERS (III) v. UNION OF INDIA AND OTHERS, reported in 1989 (3) SCC 531.

18. In the case Raghunath Prasad Singh v. Secretary, Home (Police) Department, Government of Bihar and others, reported in

1988 (Supp). SCC 519, para 4, the Apex Court noted that there was no promotional opportunity available in the wireless organization and that reasonable promotional opportunities should be available in every wing of public service as that generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service and that in the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly and accordingly, the Supreme Court in that case directed the State of Bihar to provide at least two promotional opportunities to the officers of the State Police in the wireless organization within six months by appropriate amendments of the Rules and further directed that in case the State of Bihar fails to comply with the said direction, then it should, within two months thereafter, give a fresh opportunity to personnel in the police wireless organization to exercise option to revert to the general cadre so as to consider them for further promotional prospects and that benefit should be extended to everyone in the wireless organization.

19. In the case State of Tripura and others v. K.K.Roy,

reported in (2004) 9 SCC 65, the Apex Court noted in paragraph 6 thereof that it was not a case where there existed an avenue of promotion. It is also not a case where the State intended to make amendments in the promotional policy. That the appellant therein being a State within the meaning of Art.12 of the Constitution should have created promotional avenues for the respondent having regard to their constitutional obligations, adumbrated in Articles 14 and 16 of the Constitution of India and despite its constitutional obligations, the State cannot take a stand that as the respondent therein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue for promotion, he cannot resile therefrom, etc. and it is not a case where the principles estoppel or waiver should be applied having regard to the constitutional functions of the State. The Apex Court therein noted that other States in India and the Union of India having regard to the recommendations made in this regard by the Pay Commission introduced the Scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is granted one higher scale of

pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite the existence of promotional avenues and held that promotion being a condition of service and having regard to the principles laid down by the Apex Court in various rulings, it was expected that the State should have followed the said principle making available reasonable avenues of promotion for incumbents. Accordingly, the Apex Court held that the respondent employee therein was at least entitled to grant of two higher grades one upon the expiry of the period of 12 years from the date of the joining the service and the other upon the expiry of 24 years thereof, etc.

20. In the case Food Corporation of India v. Parashotam Das Bansal reported (2008) 5 SCC 100, held in paras 12 and 13 thereof that when the employees are denied an opportunity of promotion for long years on the ground that they fell within a category of employees excluded from promotional prospect, the superior courts will have jurisdiction to issue necessary directions and that if there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the court although may not

issue any directions as to in which manner a scheme should be formulated or by reason thereof to interfere with the operation of existing channel of promotion to officers working in different departments and officers of the Government, but the jurisdiction to issue direction to make a scheme cannot be denied to a superior court of the country. The Apex Court in para 16 thereof noted that the respondent employees therein constituted only about one per cent of the total work force, whereas a huge financial benefit has been given to unionised employees constituting 85 per cent strength of the total work force and accordingly issued directions, etc.

21. The Apex Court held that how the employees should be structured is undoubtedly within the realm of the statutory authority but by reason thereof, it cannot tinker with their essential fundamental right. The Apex Court also held in para 23 thereof that the introduction of grant of selection grade does not provide for a promotion scheme. In the light of these principles, the Supreme Court refused to interfere with the impugned directions issued by the High Court therein.

22. In the light of the legal principles well settled by the Apex Court in the above referred rulings, it is now well established that when the employees are denied opportunity of promotion for long years on the ground that they fell within the category of employees excluded from promotional prospect, the Superior Courts will have jurisdiction to issue necessary direction and if there is no channel of promotion in respect of a particular group of officers resulting in stagnation over years, the Constitutional Courts have jurisdiction to issue directions to make a scheme, etc.

23. As already noted, the University after in-depth examination of the matter on the basis of the recommendations of the various committees of the University had decided to grant the benefits as per Ext.P-3(a) U.O. dated 27.10.2005. This was objected to by the Deputy Director of Local Fund Audit as per Ext.R-2(d) dated 31.8.2006 only on the ground that it has not secured the assent of the Chancellor. The University had referred the matter to the Government as per Ext.R-2(e) dated 27.2.2007. The Government as per Ext.R-2(f) dated 25.1.2008 only opined that the benefit granted as per Ext.P-3(a) is not in accordance with Ext.R-2

(b) norms of the Calicut University issued on 31.1.1994. The Government has no case that Ext.P-3(a) is bad for want of assent of Chancellor as noted by the Deputy Director of Local Fund Audit in Ext.R-2(d) dated 31.8.2006.

24. The norms in Ext.R-2(b) dated 31.1.1994 may not really be germane and relevant as far as the post of Coach is concerned, as Ext.R-2(b) is mainly framed for non-teaching post, for which the superannuation age is only upto 55 years. Whereas the incumbents in the post are to be continued in service upto the age of 60 years as in the case of University teachers in view of the subsequent judicial intervention. Therefore, the norms which are meant for pay fixation and for higher grade benefits for non-teaching staff are not really relevant for the post of Coach. Therefore, the view taken by the Government in Ext.R-2(f) dated 25.1.2008 is based on irrelevant considerations. The crucial relevant aspects that the post of Coach has no further avenues of promotion and that superannuation age for the post of Coach is no longer 55 years, but is upto 60 years of age in view of the judicial intervention, have not been properly taken note of and appreciated by the Government. It is only based on

Ext.R-2(f) issued by the State Government that the respondent University has issued the impugned Ext.P-4 order dated 28.5.2009 cancelling the benefits as per Ext.P-3(a) U.O. dated 27.10.2005. Therefore, the impugned Ext.P-4 order is tainted by irrelevant and oblique considerations and the above said crucial aspects have not been taken into consideration by the respondent authorities while issuing Ext.P-4. It is patently against the legal principles well settled in the aforementioned rulings of the Apex Court on the obligation of employers to provide reasonable avenues of promotion to employees facing consistent and long stagnation due to absence of any promotion scope. On the other hand, the crucial relevant aspects have been duly taken note of and appreciated by the respondent University in the issuance of Ext.P-3(a), which is evident from the clear cut recitals in Ext.P-4 that the sub committee of the University had taken into account the appraisal of the hard work put in by the coaches and it is on that basis, necessary recommendations were made, which led to the issuance of Ext.P-3 (a). Therefore, the impugned Ext.P-4 order is quashed and Ext.P-3 (a) U.O. dated 27.10.2005 shall stand restored. All the writ

petitioners herein and other eligible incumbents should be considered for the grant of the benefits of Ext.P-3(a) and necessary action in that regard should be taken and completed by the respondent Calicut University within a period of two months from the date of production of certified copy of this judgment and necessary eligible benefits in this regard should thus be disbursed to the incumbents concerned without any further delay.

25. It is further ordered that the respondent Calicut University shall constitute a committee to examine the aspects relating to the stagnation in service faced by the coaches like the writ petitioners herein and should consider framing of a scheme for granting them necessary promotional avenues. The continued inclusion of the category of post of Coach in the statutory First Ordinance as a non-teaching post is clearly ultra vires and legally unjustifiable and the post of Coach has to be certainly included in the relevant statutory provisions applicable for teaching posts. The University shall specifically address its concern on these vital issues through the expert study of the above said committee to be constituted. The respondent Calicut University may also specifically

consider whether the category of the post of Coach can be made the feeder source/feeder category for promotion/transfer appointment to the post of Assistant Director of Physical Education in case the incumbents satisfy all the qualifications in that regard, and such other related aspects, etc. Those aspects may be examined by the committee and the respondent University may take a decision in that regard based on the aforementioned rulings of the Apex Court. The committee in that regard shall be constituted within a period of two months from the date of production of a certified copy of this judgment. The committee shall submit their report to the respondent University within four months thereafter and the respondent University may take a decision on the said report within three months thereafter. After taking a decision, the respondent University may forward the proposal for formal approval of the State Government, if so required, and the State Government shall take a decision thereon within three months from the date of receipt of such proposal, in the light of the aforementioned legal principles laid down by the Apex Court. If the State Government does not take a decision on the above aspects within the above said time limit, the

decision so taken by the respondent University shall be construed to have been approved by the Government and in that eventuality, the University can proceed to implement its decision. If the respondent University, after this process, decides to frame a scheme for promotion of Coaches, then based on such decision, the respondent University may consider the petitioners for notional promotion benefits, as the petitioners have all retired from service as coaches long ago. Such consideration may be with reference to their eligibility and other relevant aspects regulating promotion, based on such scheme that may be framed by the University. It is made clear that it is open to the respondent University to restrict the grant of such benefits to coaches only on notional basis for such promotion and for notional refixation of the last pay. On that basis, the terminal benefits of the petitioners may be revised and recomputed and the actual arrears of monetary benefits could be limited to arrears of pensionary/ terminal benefits, based on such revision, if any. Such arrears of revised terminal benefits, may accordingly be worked out and disbursed, based on such decision that may be taken by the respondent University. It is expected that as a statutory

and fair employer, the respondents will take such decision without much delay, especially taking into account the fact that the petitioners have worked as Coaches for long years and have already retired from service. The petitioners are at liberty to submit detailed representations, on the above said aspects to be considered by the committee and such representations may be submitted by them to the University within four weeks from the date of receipt of a certified copy of this judgment and the University shall forward those representations to the above said committee to be constituted as directed above. The committee may also give a reasonable opportunity of being heard to the petitioners through their authorised representatives and shall take into consideration the specific grievances and proposals that may be referred to in such representations.

26. It is further ordered that all the other grievances of the petitioners relating to advance increments, earned leave surrender benefits, etc, are left open and the petitioners, if they have any subsisting grievances in this regard, may approach the respondent Calicut University by filing appropriate representations within a

period of one month from the date of receipt of certified copy of this judgment and the respondent University shall consider such representations and take decisions thereon within a period of three months from the date of receipt of such representations.

With these directions and observations, all the Writ Petitions stand finally disposed of.

sdk+

Sd/-
ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge