



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11/3/2020

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal (MD) No.1359 of 2015

The Manonmaniam Sundaranar University
rep. By its Registrar
Abhisekapatti
Tirunelveli 627 012.

...

Appellant /Respondent

Vs

Dr.X.Rosary Mary
Director
Department of Youth Welfare
The Manonmaniam Sundaranar University
Abhisekapatti
Tirunelveli 627 012.

...

Respondent /Writ Petitioner

Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.(MD) No.9193 of 2012, dated 2/2/2015.

Prayer in WP(MD). 9193/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the respondent Manonmaniam Sundaranar University, Tirunelveli in Memo No.MSU/R/Estt/Admn/Retd/2012 dated 31.05.2012 quash the same and further direct the respondent University to allow the petitioner to continue in service as Director in the Department of Youth Welfare up to the age of superannuation of 60 years with all attendant benefits.

For appellant

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Mr.M. Mahaboob Athiff
for M/s.Ajmal Associates

For respondent

...

Mr.R.Subramanian

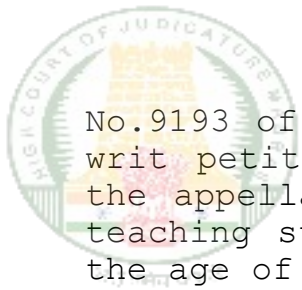
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J U D G M E N T

SUBRAMONIUM PRASAD, J

Manonmaniam Sundaranar University, has filed the instant writ appeal, challenging the judgment dated 2/2/2015, passed in W.P.(MD)

<https://hcservices.ecourts.gov.in/hcservices/>



No.9193 of 2012, by which the learned Single Judge has allowed the writ petition, setting aside the order dated 31/5/2012, passed by the appellant University, refusing to treat the writ petitioner as teaching staff and not permitting her to continue the service till the age of 60.

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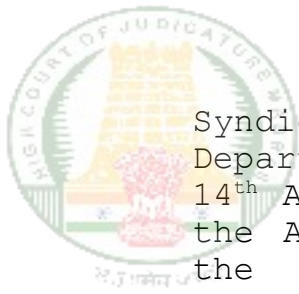
2. The short issue which arises in this appeal is as to whether the post of Director, Youth Welfare Department in the appellant University would be a teaching staff and be permitted to continue in service till the age of 60 years.

3. The writ petitioner was a Teacher in Botany in St.Mary's College, Tuticorin. She possess M.Sc, M.Phil and Ph.D Degree in Botany. Pursuant to an advertisement, the writ petitioner applied for the post of Director Youth Welfare in the appellant University. She was selected and appointed. She joined the appellant University as Director in the Department of Youth Welfare.

4. The writ petitioner states that the appellant University is funded by the State Government, Central Government and University Grants Commission. The Department of Youth Welfare is one of 26 Departments, functioning in the appellant University. According to the writ petitioner the department helps in human Resources, Development Training for Students and Teachers of the affiliated Colleges, Counselling and career guidance, conducts personality and leadership development programme, self-confidence and memory power building, soft skills, histrionic talents, entrepreneurship programme, sensitisation and orientation for competitive examinations, Disaster Management Training Programme, Training in humanitarian services. It is also involved in activities like organising Blood Donation Camps, training students for participating in inter-University Level Cultural and Literary competitions and placement programmes through campus interviews, etc. The writ petitioner was to reach the age of 58 in May 2012. The retirement age of Teachers in the University is 60 and the retirement age for non-teaching staff is 58. The writ petitioner reached the age of 58, in the month of May 2012 and she was relieved from the services as Director Youth Welfare Department on 31/5/2012.

5. Challenging the order of retiring, respondent herein has filed W.P.(MD) No.9193 of 2012. The learned Single Judge has allowed the writ petition, holding that the petitioner being a Teacher should have been permitted to continue till the age of 60 years and could not have been retired at the age of 58. Relevant paragraphs are extracted hereunder:-

"23. Though the post of the Director is under the Act of Statutes not specifically mentioned to be teaching staff, the Syndicate has in the resolution dated 08.05.2007 declared the Department of Youth Welfare as non vacation academic department. The



Syndicate has shown the Department as Academic Department in 6th Annual Report July 1996 to June 1997, 14th Annual Report July 2004 to June 2005. Clause 20 of the Annual Quality Assurance Report 2009-2010 of the University has included the post of Director Youth Welfare Department as one among the teaching staff. Under Clause 20 the total number of teaching staff in various posts of Professor, Associate Professor, Assistant Professor, Director of Youth Welfare Department, Librarian, Deputy Librarian and Assistant Librarian are totally 147 and other staffs working in the administrative section comes to 294. It is specifically mentioned in Clause 20 that the Director Youth Welfare Department is one of teaching staff. Dr. Rosary Mary, Director of Youth Welfare Department is shown as one of the faculty members in the University Information Directory relating to 2008 - 2009 and in the respondent University website dated 22.06.2012 on Department of Youth Welfare and list of teaching staff. With regard to the nature of the activities stated therein, the Youth Welfare Department is entrusted with the task of coordinating and extending all kinds of youth related activities at the colleges and University Department and it has to organize placement programmes and train the teacher to, intern, train the students to prepare themselves. It is also stated therein that the department is doing extension activities in the form of teaching and learning in the following areas and conducting work shops/seminars on personal effectiveness, Career Guidance, Leadership, Gender Awareness, Health Awareness, Human Rights, Capacity Building, Soft Skills, Model Youth Parliament, Interview Techniques, Life skills Education, Change & Positive attitude, Decision making & problem solving and Effective Communication. It is further stated that the University Students Advisory Bureau (USAB) tries to provide counseling to the students of the University Departments. In other website regarding list of teaching staff as on 01.05.2010 the Director Department of Youth Welfare is shown as one of the teaching staff.

24. The respondent University except relying on the constitution of the selection committee, is unable to explain the circumstances under which the Director, Department of Youth Welfare is treated as one of the faculty members and teaching staff in the reports relating to the University submitted to various authorities. As the selection committee is constituted by the University Syndicate without any involvement on the part of the petitioner in any



manner, the nature of the post cannot be decided solely on the basis of constitution of selection committee.

25. The definition of the expression teacher and the teacher of the University in the definition Section under the University Act 2(m)(n) as per which "teacher" means other person giving instruction in University Colleges or laboratories etc., Section 2 (o) says teachers of the University means persons appointed by the University to give instruction on its behalf. If the nature of the activities carried on by the department if viewed in the light of the definition of teacher under the University Act, it will undoubtedly lead to an inference that the Director indulging in activities thereby imparting educational instructions on various aspects to the teachers and students has to be necessarily treated as academic staff and not otherwise."

6. The learned Single Judge, placed heavy reliance on a judgment of the Kerala High Court in **Dr.MNC.BOSE, DIRECTOR OF STUDENTS SERVICE, UNIVERSITY OF KERALA Vs. UNIVERSITY OF KERALA AND OTHERS (2012 SCC ONLINE KERALA 10654)**. The learned Single Judge on the basis of the judgment of Kerala High Court held that that the Director of Youth Welfare Department imparts instruction to the students and therefore, it would come within the definition of a Teacher. It is this order which is under challenge in the instant writ appeal.

7. Heard Mr.M.Mahaboob Athiff, learned counsel for the appellant and Mr.R.Subramanian, learned counsel for the respondent and perused the materials available on record.

8. Mr.M.Mahaboob Athiff, learned counsel appearing for the appellant University would contend that reliance on the judgment of the learned Single Judge of the Kerala High Court is completely misplaced in as much as the learned Single Judge had described the judgment of the Kerala High Court as one given by the Hon'ble Supreme Court. He would state that the judgment of the High Court of Kerala in **Dr.MNC.BOSE, DIRECTOR OF STUDENTS SERVICE, UNIVERSITY OF KERALA Vs. UNIVERSITY OF KERALA AND OTHERS (2012 SCC ONLINE KERALA 10654)**, wherein, the High Court of Kerala had found that the Department of Physical Education is doing academic work has been set aside by the Division Bench in **2015 SCC ONLINE KERALA 21911 UNIVERSITY OF KERALA Vs. Dr.MNC.BOSE**, wherein the Division Bench held as under:-

"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 Vs.**

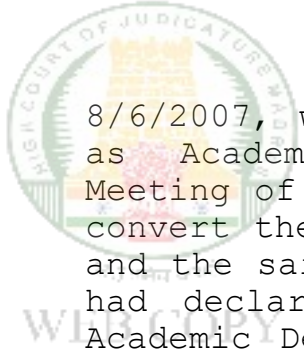


DR.K.K.VENU [2014 (3) KLJ 425], question is whether the duties mentioned in Ext.P22 certificate would indicate that the respondent was imparting instructions. According to us, giving guidance to the University Union for organising University Youth Festival or giving training programmes to students in 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."

9. Learned counsel for the appellant University would contend that Appendix I to the Statute states only the posts of a Professor, Reader, Lecturer and Registrar as teaching faculty and the rest which includes Youth Welfare Director are described as non-teaching faculties. He would therefore, contend that the learned Single Judge failed to appreciate that when the Statute itself places the post of Youth Welfare Director in the list of non-teaching staff, then the learned Single Judge could not have held that the Director, Youth Welfare Department holds a teaching staff. Learned counsel for the appellant would contend that the judgment of the learned Single Judge is therefore, contrary to the Statute.

10. He would further state that the method of recruitment of teaching staff and non-teaching staff is different and the writ petitioner was appointed as a Director of Youth Welfare by an interview Board which is constituted for recruitment of a person to hold a non-teaching post. He would also state that qualifications and experience of persons who hold teaching posts are prescribed by the University Grants Commission whereas the senate of the University prescribes the qualifications for non-teaching staff. The qualifications for the post of Director Youth Welfare Department has been fixed by the senate and not by the UGC and therefore, the post of Director cannot be taken to be a teaching staff. He would therefore, submit that this aspect has not been considered by the learned Single Judge.

11. Per contra, Mr.R.Subramanian, learned counsel appearing for the respondent would rely on a definition of "Teacher" in the Manonmaniam Sundaranar University Act, 1990 (hereinafter called as the "Act") and the definition of "Teacher of University". He would contend that the writ petitioner was imparting instructions to the students for the various activities which have been described in the earlier portions of this judgment. He would rely on a letter, dated



8/6/2007, wherein the Department of Youth Welfare has been defined as Academic Department. He would also rely on the minutes of the Meeting of the Syndicate, dated 5/2/2008 wherein it was resolved to convert the post of Director of Youth and Welfare to a regular post and the said Resolution also states that the Syndicate, on 8/5/2007 had declared the Department of Youth Welfare is a non-vacation Academic Department. He would state that since the Department of Youth Welfare is an Academic Department, then naturally, the post of Director is a teaching post.

12. Learned counsel for the appellant has also placed reliance on a judgment of the Hon'ble Supreme Court in **P.S.RAMAMOHANA RAO Vs. A.P.AGRICULTURAL UNIVERSITY AND ANOTHER (1997) 8 SUPREME COURT CASES - 350**, which held that the Physical Director in Bapatla Agricultural College comes within the definition of a Teacher, under Section 2 (n) of Andhra Pradesh Agricultural University (Conditions of Service) Regulations, 1965.

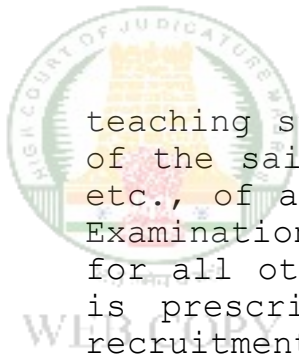
13. "Teachers" and "Teachers of University" are defined terms in the Act. Section 2 (n), (o) of the Act which defines Teachers and Teachers of University read as under:-

(n). **"Teachers"** means such Lecturers, Readers, Assistant Professors, Professors and other person 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.

(o). **"Teachers of the University"** means persons appointed by the University to give instruction on its behalf.

14. Chapter IX of the Act deals with conditions of service of the teaching and non-teaching staff. Sections 43 deals with conditions of service and Section 44 deals with the Selection committee for making recommendations for the recruitment of a Professor, Assistant Professor, Reader, Lecturer and Librarian of Institutions, maintained by the University. Sections 44 stipulates that there shall be a Selection Committee for appointing to the post of Assistant Professor, Reader, Lecturer and Librarians. Section 45 deals with Terms and conditions of Service of the Heads of Departments. Section 45 stipulates that each Department of the University shall have a Head, who shall be a Professor or Director.

15. Statutes have been framed under the Manonmaniam Sundaranar University Act. Chapter XVII of the statute deals with Service Conditions of the Establishment. Statute - 4 in Chapter XVII deals with creation of non-teaching posts, the mode of recruitment of non-teaching posts, the criteria for promotion, the selection committee for non-teaching staff, the qualification, age etc., of teaching staff. The composition of the Selection Committee of the non-teaching staff is different from the Selection Committee for a non-



teaching staff which is given in Section 44 of the Act. A perusal of the said statute in Chapter XVII shows that qualification, age, etc., of a Professor, Reader, Lecturer, Registrar and Controller of Examinations which are described in Appendix I to the Statute and for all other posts, the qualification, method of recruitment etc., is prescribed in Appendix 2. Appendix I deals with method of recruitment, qualifications prescribed in various teaching and non-teaching posts in the University. These include Professor, Reader, Lecturer, who are described as teaching staff and the Registrar, Controller of Examinations which are described as a non-teaching staff. The post of Youth Welfare Director is comes only in Appendix-II and not in Appendix-I which deals with the post of Professor, Reader and Lecturer only.

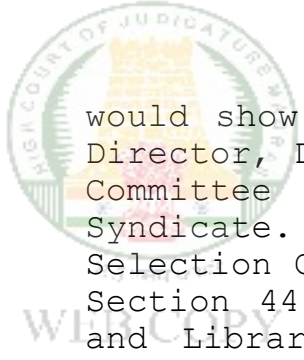
16. Statute 8 in Chapter XVII of the statutes deals with the age of retirement, which reads as under:-

"An employee of Classes A, B and C shall retire from the University Service on the last day of the month in which he/she completes his/her 58th year of age in respect of non-teaching staff. An employee of Class D shall retire on the last day of the month in which he/she completes his/her 60th year of age. The age of recruitment for teaching staff's 60 and they will retire on the last day of the academic year in which they complete 60 years."

17. Appendix II gives the method of recruitment and the qualification for all other posts which includes the post of Director Youth Welfare Department. A perusal of all the relevant Sections under the Act and the provisions under the Statutes shows that the Act deals with Selection Committee of the Teaching faculty which is the post of Professor, Reader, Lecturer and Librarian.

18. Post of Director has not been defined in the Act. The Act postulates that there can be more than one. Professor in each Department and the head of the Department is appointed in a manner prescribed in the Ordinance. Unlike the post of a Head of the Department where Professors are rotated to hold the said post, there is no question of any rotation for the post of Director. A person appointed as a Director to Head the Department continues to head the Department unless he has either transferred or leaves the position on account of superannuation or if he increase in disqualification by which he cannot hold the post of a Director. The post of a Professor and a Director are therefore, distinct and separate.

19. A perusal of the above would show that teaching posts are mentioned in the Act. The non-teaching posts can be created by Syndicate and the Syndicate lays down the mode of recruitment for non-teaching posts. A perusal of documents produced before us



would show that advertisement for which the petitioner applied was Director, Department of Youth Welfare. The members of the Selection Committee were the Vice Chancellor and four members of the Syndicate. This Selection Committee was not in accordance with the Selection Committee constituted for appointing the post mentioned in Section 44, viz., Professor, Assistant Professor, Reader, Lecturer and Librarian of Institutions maintained by the University. The selection is approved by the Syndicate and the appointment is for a period of three years.

20. The material on record also shows that a Resolution was passed on 5/2/2008 converting the post of Director, Department of Youth Welfare to a regular post and the writ petitioner was appointed on a permanent basis. Syndicate has declared that the Department Youth Welfare is a non-vocation Academic Department. Despite the fact that Syndicate has declared that Department of Youth Welfare is a non-vocation Academy Department, there is no consequent amendment in the Statutes demonstrating that the post of Director as a part of the teaching faculty which Appendix I describes as Professor, Reader, Lecturer, etc.

21. Teaching faculty has also not been defined under the Act. The Act only defines "Teachers". A perusal of the definition of the term "Teacher of the University" shows that they are persons appointed by the University to give instructions on their behalf. Teaching staff has not been defined under the Act. Chapter XVII of the Statute which deals with service conditions of the establishment and which are known as the "service Statutes of the Establishment" creates a distinction between the qualifications for a teaching staff and a non-teaching staff. Qualifications or appointment of a teaching staff is prescribed by the University Grants Commission and for various other categories, the qualifications are prescribed by the Syndicate. The qualifications for the post of Youth Welfare Director has not been specified by the University Grants Commission. The qualification of the Youth Welfare Department has been laid down by the Senate. Therefore, the differentiation in Statute 4 (a) prescribing the qualifications for both teaching and non-teaching staff and the post of Director of Youth Welfare Department not being shown as a teaching faculty has to be taken as an important guiding criteria to decide who is a teaching staff. The only way to find out as to whether the Director of Youth Welfare Department would come within the definition of Teacher in the University would depend as to whether the Director gives instructions on behalf of University or not. "Instructions" means something that someone tells you to do. The instruction has to be on behalf of the University.

22. The Oxford English Dictionary, IInd Edition, describes teacher as one who or that which teaches or instructs; an instructor; also one whose function is to give instruction, especially in a school. Similarly instruct has been defined in

<https://heservices.edcourts.gov.in/heservices/>



Oxford English Dictionary as (a) to furnish with knowledge or skill in an art or branch of study; to educate or train in the knowledge of some particular subject, to give methodical teaching to. (b) To impart knowledge to (a person) concerning a particular fact or circumstance; to apprise, inform. (c) To furnish with authoritative directions as to action; to direct command. Instruction has been defined as (a) The action of instructing or teaching; the imparting of knowledge or skill; education; information. (b) The knowledge or teaching imparted. An item of knowledge imparted; an instructive rule, a precept, a lesson. (c) Knowledge imparted concerning a particular fact or circumstance; information. An item of information imparted or acquired, an account, a narrative.

23. It cannot be said that a Director Youth Welfare Department imparts knowledge to the students. Even as per the petitioner the Director Youth Welfare Department provides career guidance to students, coordinates for conducting programmes in Human Resource Development, organizes programmes for personality and leadership development, organizes training programmes in disaster management, organizes blood donation camps, and helps in participation in inter-university level cultural and literary competitions or conducting placement programmes through interviews. All these activities cannot come within the definition of providing instructions.

24. The contention that the University itself has passed a Resolution dated 5/2/2008 wherein, it was resolved to convert the post of Director, Department of Youth Welfare from term post to regular post and further resolved to absorb Dr.X.Rosary Mary as Director, Department of Youth Welfare on a permanent basis and that the Syndicate has already declared that the Department of Youth Welfare is a non vocation Academic Department does not mean that the Director Youth Welfare Department becomes a Teacher and consequently, a teaching staff.

25. Had the University intended to make the post of Youth Welfare Director as a teaching staff, then it would have included it in Appendix-I and would have made amendments in Section 44 of the University Act. A resolution stating that the University that Department of Youth Welfare is a non-vocation Academic Department does not ipso facto make the Director of the Department a Teacher. The reliance placed by the learned counsel for the University on the Appendix to the statute to substantiate his contention that the Director Youth Welfare Department is not a teacher is well founded. As stated above, Statute 8 in Chapter XVII dealing with the service condition and establishment only prescribes that the age of a retirement of the teaching staff is 60 years.

26. The learned counsel for the respondent has placed heavy reliance on the judgment of the Hon'ble Supreme Court in **P.S.RAMAMOHANA RAO Vs. A.P.AGRICULTURAL UNIVERSITY AND ANOTHER** (1997) 8 SUPREME COURT CASES - 350, while dealing with an issue as



to whether Physical Director under the Andhra Pradesh Agricultural University Act. Paragraph 5 reads as under:-

"5. For the purpose of deciding the above issue arising between the parties, it is necessary to refer to the relevant provisions of the Act and the Regulations. Sub-clause (n) of section 2 defines teacher as follows :

2 (n). "teacher" includes a professor, reader, lecturer or other person appointed or recognised by the University for the purpose of imparting instruction or conducting and guiding research or extension programmes, and any person declared by the statutes to be a teacher."

The definition does not say what the word "teacher" means but includes certain categories within the meaning of the said word.

7. From the above Regulation, it is clear that the age of retirement for "teachers" is 60 years and for other employees it is 58 years while the age of Class IV employees is 60 years. It is, therefore, clear that if the appellant is a teacher, he will come under sub-clause (a) of Regulation 33 and is entitled to be continued till he completes 60 years. If on the other hand he does not come within the definition of teacher, he has to retire at the age of 58 years under clause b(i) of the above-said Regular.

8. Neither the Act nor the rules & regulations specify the duties and functions of a Physical Director. We have, therefore, to go by the material available in the affidavits filed by the parties to decide that question. In the additional counter affidavit filed on behalf of the University in the High Court, it is stated in paragraph 7 as follows:

"I further submit that duties of the Physical Directors in this University, in brief, are as follows :

(a) to arrange games and sports daily in the evenings for the students,

(b) to look after the procurement of sports material and the maintenance of the sports grounds,

(c) to arrange inter-class and inter-Collegiate tournaments,

(d) to accompany the student teams for the Inter-University tournaments.

(e) to guide the students about the rules of the various games and sports."



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

27. The said judgment cannot be applied here for the reason that the definition Teacher in the Andhra Pradesh Act is much wider than the definition in the present Act. The word Teacher included a person engaged by University for conducting and guiding research or extension programmes. In the present case, the definition of Teacher is much narrower. It restricts only those persons who imparts education. Para 17 of the said judgment reads as under:-

"17. In our view, the learned Judges did not go into the meaning of the word "teacher" in the main part of the clause nor assessed correctly the effect of the material evidence on record. The learned Judges observed that assuming Physical Directors imparted instructions to their students, unless the University recognised them as teachers they could not claim the benefit of Section 2(n) of the Act. Obviously the learned Judges were referring to the last part of Section 2(n) which includes persons other than those enumerated in the inclusive part if so recognised by the University. As we have held that the Physical Directors come within the main part of the definition of "teacher", it is in our opinion not necessary that they should be separately recognised as teachers by an order or statute of the University."

28. The Hon'ble Supreme Court in the said decision, has relied on the definition under the Andhra Pradesh Act. As stated above since the definition in the present case is much narrower and does



not include persons conducting and guiding research or extension programmes. We are of the view that the work as which is being conducted by the respondent as stated by her in the petition, cannot amount to imparting instructions to the students.

29. In view of the above, we **allow the appeal** of the University and set aside the judgment of the learned Single Judge. No costs.

Sd/-

Assistant Registrar (co)

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Sub Assistant Registrar(CS)

mvs/pkn.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-11483[F] dated 13/03/2020)

judgment in
Writ Appeal (MD) No.1359 of 2015
11/3/2020

VB(01.06.2020) 12P 3C