



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.07.2023

PRONOUNCED ON: **21.12.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.201 of 2012

The Registrar,
Madurai Kamaraj University,
Palkalai Nagar,
Madurai.

...Appellant

/Vs./

1.K.Govindan (Died)

2.The Secretary,
University Grants Commission,
Bahadur Shah Zafar Marg,
New Delhi – 110 002.

3.The Director,
Consortium for Educational Communication,
N.S.C.Campus,
Aruna Asaf Ali Marg,
New Delhi – 110 067.

4.R.Nagamani

5.G.Raja Ganesan

6.G.Balaji

7.G.Bharathi

...Respondents

(Respondents 4 to 7 are substituted as LR's of the deceased first respondent vide Court order dated 09.11.2022 made in CMP(MD)No.9863 of 2022.)



aside the order passed in W.P.(MD)No.2166 of 2006 dated 08.04.2011 and dismiss the above said writ petition.

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For Appellant : Mr.T.CibiChakraborty

For Respondents : Mr.P.Karthick

Standing Counsel for UGC (R2)

Mr.M.Ajmal Khan, Senior Counsel,

for Mr.K.Ponniah (R4, R6 & R7)

No appearance (R3 & R5)

JUDGMENT

(Judgment of the Court was made by **DR.ANITA SUMANTH, J.**)

The challenge in this writ appeal is to an order of the Writ Court dated 08.04.2012, wherein the prayer for certiorarified mandamus challenging order dated 27.02.2006 of the Registrar, Madurai Kamaraj University ('MKU') was considered. A consequential direction had been sought to the respondent to reinstate the writ petitioner with continuity of service and all consequential benefits. The writ petition had come to be allowed, order dated 27.02.2006 quashed and consequential direction issued as prayed for as against which the present writ appeal is filed by MKU.

2. The facts as necessary to decide this writ appeal are that the Writ petitioner, who is a Graduate in Botany, PG in Tamil and Diploma holder in Linguistics and Marxian Thought with a certification in Russian language, had been employed as Professor of Tamil in Yadhava College, Madurai.



3. He was appointed as a Coordinator in the Department of Audio Visual Research or the Audio Visual Research Centre ('Centre'/'AVRC', also referred to variably as the Educational Multimedia Research Centre/'EMRC') in MKU in August 1987. While he retained his lien in Yadhava College, his post was redesignated to Coordinator and Head of the Department (HOD) of Educational Multimedia Research Centre and with this, he was absorbed into MKU.

4. The writ petitioner sought all benefits as available to the holder of an academic post and the question that thus arose before the writ Court was as to whether the post that he occupied constituted an academic or non-academic post. The writ Court accepted the contentions of the writ petitioner based on the following events:-

(i) Resolution of the Syndicate of the MKU in meeting held on 24.11.1990 to the effect that the post of Coordinator EMRC) was an academic post (non-vacational);

(ii) Letter dated 10.09.1990 from the University Grants Commission (in short 'UGC / Commission) that confirmed that the posts of Director, Joint Director, Coordinator, Project Officer, Assistant Project Officer, Professor / Reader / Lecturer, Producer / Production Assistant / Programme Engineers / Maintenance Engineer / Assistant Engineer, Research Scientists / Research Officer and Media Librarian in EMRC are to be treated as academic (non-vacational) posts;



(iii) Letter of MKU dated 15.03.1993, that confirmed that the EMRC is to be treated as a separate entity with 100% support of UGC and the staff are to be treated on par with regular University staff governed by University Rules and Regulations.

(iv) Letter dated 15.03.1993 also confirmed that all privileges, such as General Provident Fund and Pension admissible to regular staff of the University are to be extended to the staff of EMRC as well, subject to the condition that the pension contributions are to be met out of funds allocated to the EMRC.

(v) The above letter then confirmed, referring to Syndicate Resolution dated 24.11.1990, that the EMRC was to be treated as an academic department with no vocational facilities. The posts of Coordinator, Producer, Assistant Engineer, Research Scientists of 'A' Production Assistant, were regularized with effect from the respective dates of appointments as per the annexure to that letter;

(vi) Memorandum of Understanding (MOU) was executed inter se MKU and UGC, and under recital D, Clause 4.8 of the MOU, the parties agreed that the academic, technical and other staff of the media centre would be treated as equivalent to the teaching, technical and other staff of the University.

5. While this is so, MKU took a stand before the writ Court that the post of Research Scientists and Coordinator had been designated as non-academic vocational post by UGC under letter dated 06.01.2000. Based on this letter,



MKU refused the benefits sought for by the writ petitioner on the ground that the post of Coordinator would not fall within the academic stream. UGC reiterated the contents of letter dated 06.01.2000 by its letter dated 09.08.2001, which was specific to the request of the writ petitioner.

6. UGC states, on the grant of higher pay slab to the writ petitioner, that the post of Coordinator, EMRC could not be converted to form part of the academic stream. This point assumes importance in the context of whether the writ petitioner ought to have been retired at the age of 58, as MKU insisted, or 60, as he claimed.

7. There is some ambiguity on the usage of terminology in categorizing the posts. Throughout the pleadings as well as in the communications, we see that the terms 'Vocation' and 'Vacation' have been used. The petitioner had also raised two queries on 17.05.2008 and 24.06.2008, both under the Right To Information Act, 2005 ('RTI Act') seeking clarification.

8. The response from Mr.Renu Batra, Public Information Officer of the UGC is as follows:

*UNIVERSITY GRANTS COMMISSION
BAHADUR SHAH ZAFAR MARG
NEW DELHI – 110002*

F. 1-25/2007(MC)

19 Jun 2008

*Sh.S.Vengalakshmi,
Advocate and Notary,
Commissioner of Oath,
42, Dhalavoi Agraharam
Madurai-625 001.*



Sub: Information under RTI, Act, 2005- Regarding.

Sir;

With reference to your letter no.nil dated 17-5-08 on the subject cited above, I am to say that the reply of the queries raised by you are as under:

<i>S.No.</i>	<i>Query</i>	
<i>1.</i>	<i>I need this documents (UGC Letter No.F-14-1/93(MC) dated 6-1-2000).</i>	<i>Letter is not traceable.</i>
<i>2.</i>	<i>Please clarify that Is there any category as “Non-Academic Vacation.”</i>	<i>Yes, As per staffing Pattern circulates vide letter dated 6-6-96 by the UGC , the posts were categorized in three category i.e 1.Academic non-vacation 2.Technical 3.Administration and supporting staff(copy enclosed).</i>
<i>3.</i>	<i>If this category as “Non-Academic Vacation:.. Exits: who are the persons/post/position in the UGC Controlled institution prevailed</i>	<i>As per staffing pattern following posts are under the Academic non-vacation: Director, Joint Director, Research Officer, Junior Research Officer, Assistant Librarian Professional Assistant (Library)</i>
<i>4.</i>	<i>If this word is wrong “Non-Academic Vacation.” Please inform the correct nomenclature.</i>	<i>As per said document the terminology is academic non-vacation.</i>
<i>5.</i>	<i>Send fresh corrected letter to MKU and a copy to me.</i>	<i>Copy of the letter is enclosed.</i>

Yours Faithfully,



(Renu Batra)
Public Information Officer

Encl: As above

UNIVERSITY GRANTS COMMISSION
BAHADUR SHAH ZAFAR MARG
NEW DELHI – 110002

F. 1-25/2007(MC)

12 Aug 2008

Sh.S.Vengalakshmi,
Advocate and Notary,
Commissioner of Oath,
42, Dhalavoi Agraharam
Madurai-625 001.

Sub:- **Documents-clarification Under RTI Act, 2005-Requested**

Sir,

With reference to your RTI query dated 24-06-08 raised by you on the subject cited above, the reply of your queries are as under:-

S.No.	Question	Reply
1.	I need this documents (UGC Letter No.F-14-1/93(MC) dated 6-1-2000).	The said letter is not traceable.



2.	<i>Please clarify that Is there any category non-academic vacation.</i>	<i>As already intimated vide letter of even No. dated 19-06-08 the terminology is Academic non-vacation. As such there is no category as Non Academic vacation.</i> <i>As you have asked for information regarding vacation for technical, administration and supporting staff, it is stated that as per guidelines issued vide letter No.3-2/89 (MC) dated 04-09-95, it is clearly mentioned that leave to the Media Centre staff is sanctioned as per the University Rules (copy enclosed Annexure –I)</i>
3.	<i>Send fresh corrected letter to MKU and a copy to me</i>	<i>Since there is no category as Non-Academic vacation, the question of sending fresh corrected letter to MKU and the person concerned does not arise.</i>

Yours Faithfully,

(Renu Batra)
Public Information Officer

9. The parties have now clarified the position that the correct terminology is '*academic-non vacational post*', meaning '*academic post without vacation benefits*'.

10. That apart, learned Judge in the impugned order has noted that letter



itself. Moreover, letter dated 10.09.1990, had also not been referred to in letter dated 09.08.2001.

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11. The writ Court had specifically solicited the views of UGC in this matter, but notes at paragraph 16 of the writ order that despite opportunity, UGC had not tendered any response or reply. Thus, the writ Court concluded, in light of UGC letter dated 10.09.1990, MKU syndicate resolution dated 24.11.1990 and MKU letter dated 15.03.2013, that the writ petitioner should be treated as coming under academic non-vacational post. Order dated 27.02.2006 was quashed and MKU directed to pay salary and all benefits to which the Coordinator and HOD of EMRC was entitled, till the writ petitioner attained the age of 60. Hence, this Writ Appeal by MKU.

12. Heard the detailed submissions of all learned counsel. The appellant stresses on the position that the post of Coordinator in the AVRC did not involve any academic duties. The role of the coordinator related to creation of modules for educational purposes. The content was obtained from experts who were contracted for that purpose. The coordinator merely facilitated the preparation of the module and there was no intellectual or subject-oriented input or contribution by him.

13. The appellant would concede that there has been some ambiguity over the years in regard to how the role of a co-ordinator was to be understood, in particular, whether his role was to be understood as an academic or non-academic functionary. While there had been instances where the coordinator



would engage in content preparation himself, on account of his personal knowledge/interest/passion in regard to a particular subject, officially, the demands of the role are only administrative and logistic, not touching upon content preparation.

14. Such a post would fall only under the non-academic category. He refers to the MKU Statutes to point out that only a professor or teaching staff, shall be retained till 60 years, and in all other cases the age limit was 58. Clause 29 of the Chapter XXIV of the MKU Statutes deals with 'Retirement' and states that a non-academic employee shall be in service till he attains the age of 58.

15. The appellant cites a judgment of the Hon'ble Supreme Court in *I.I.T. Kanpur vs Umesh Chandra & Ors* (2006 5 SCC 664) that dealt with the appointment of a junior pilot instructor (Glider). Based on the applicable rules, the High Court had classified the employee as falling within the academic category.

16. That position came to be reversed by the Apex Court that noted that the Gliding and Soaring Centre at IIT had been constituted to provide for an informal recreational avenue in adventure sports and other aviation sports in Aero-modeling club. The High Court had reasoned that gliding cannot be separated or kept aloof from either the academic or Aerospace Engineering course.

17. However, the relevant Statutes categorised a junior pilot instructor (glider) under Technical staff. Thus, the mere fact that the candidate was



engaged in the activity of gliding would not bring him within the cadre of academic staff. Moreover, under the relevant Statutes (clause 11), an Instructor was equated to, or comparable with the post of Assistant Lecturer whereas a senior pilot instructor was comparable to the post of Senior Physical Instructor.

18. In Writ Appeal No.832 of 2012 (*The English and Foreign Languages University, Tarnaka, Hyderabad and another V. Dr.P.Ranjanamma and another*), a Division Bench of the Andhra Pradesh High Court by decision dated 09.07.2012, considered a similar issue as raised in this Writ Appeal.

19. The successful petitioner in that matter had joined the services of the erstwhile Central Institute of English and Foreign Languages (CIEFL) in the post of Producer in 1985. The UGC had confirmed that that post was an 'Academic Non-Vacational' post and hence she was granted all benefits commensurate to that classification, such as, Career Advancement Scheme, senior scale of pay on completion of 5 years and Pay Band – IV on par with Readers/Professors, from February, 2009. Their understanding was that she had been holding a teaching post from inception.

20. However, in December, 2010, the English and Foreign languages University, the successor-in-interest of CIEFL, demoted the petitioner to Pay Band III on the basis of the clarification received from the UGC. That was challenged by her and while issuing Rule Nisi at the time of admission, the order impugned in that Writ Petition was suspended.

21. Pending the Writ Petition, the petitioner was informed by the



University that she would retire from service on attaining the age of superannuation of 60 years. She made a fresh application on the ground that she was entitled to continue in service till 65, being an academic non-vacational post holder and that application came to be allowed, in the sense that the proceedings retiring the petitioner pre-maturely were suspended by the writ Court.

22. The University challenged the order passed in that application and that Writ Appeal came to be allowed on 09.07.2012. The Division Bench noted the role played by the petitioner as a Producer in the CIEFL, of which the EMRC is a part. In answering the question as to whether the post of Producer in a Media Centre by UGC would be a teaching post or otherwise, the Division Bench refers to the order of this Court in *Dr.K.Govindan V. the Registrar, Madurai Kamaraj University* (W.P.No.2166 of 2006 dated 08.4.2011), which order is presently in appeal before us, disposed by way of this order.

23. The order of the Writ Court was distinguished by the Division Bench on the ground that in this case, there is an MOU entered into between the UGC and MKU as well as the Syndicate Resolution, both to the effect that the petitioner belongs to academic non-vacational category.

24. There was no such comparable MOU or Syndicate Resolution in that case and as such, they did not choose to apply the conclusion of the writ Court in the case before them. Ultimately, they decide adverse to the writ

Petitioner observing that the categorization of the post cannot be decided on the



basis of the nomenclature adopted and that the petitioner had not established that she was holding a teaching post.

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25. The UGC had not filed a counter in that matter as well and hence the Bench had been disinclined to presume that the post of Producer was a teaching post, merely on the basis of its nomenclature, being, 'academic non-vacational'. Moreover, there were other letters issued by the UGC as referred to in that order, to the effect that the Producer is not a Teacher for the purpose of Career Advancement Scheme, since such a post does not fulfill the parameters set by the Ministry of Human Resource Development, Government of India.

26. They were thus not inclined to accede to the position that that writ petitioner be permitted to continue in service till the age of 65 years on par with teaching staff and allowed the appeal. The stand of the UGC is vague and nebulous in this matter as well and since no counter had been filed initially, we were constrained to specifically direct them to do so now in order that some clarity be obtained.

27. The AVRC has been set up with the object of expanding the scope of dissemination of education and opening the Country as one large classroom. Indeed today, the prevailing view is that 'the classroom is where you are'. To that end, the world is one large classroom without the limitations or constraints of space or physical impediments. Modules for education in varied subjects are freely available on the Internet. High quality and well-researched programmes



are certainly an informative aid to education and if carefully selected, can provide an invaluable supplement for all branches of education.

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28. The AVRC was, and is, a laudable initiative that had sought to take advantage of the medium of Television to take University level education to remote parts of the Country. The expenditure for the establishment of the programme functioning, salary etc. were met by the UGC. The AVRCs were to be administered by Universities country wide. It is thus that an AVRC had been set up at MKU in 1986.

29. The purpose of the direction to the UGC to file a counter was to ascertain their stand on (i) the role envisaged for the producer and other functionaries in the AVER (ii) the roles actually played and the duties performed by them (iii) whether such functionaries were intended to form part of the teaching or non-teaching streams in the universities and (iv) the contrasting and conflicting stands taken by the UGC in regard to the categorisation of the functionaries over the years. This last point assumes importance in this case as both the MOU as well as UGC, in letter dated 10.09.1990 had confirmed that the writ petitioner belongs to the academic non-vacational category.

30. In the counter, the UGC has merely confined itself to setting out the background to the setting up of the AVER/EMRC and the rationale for the same. However, disappointingly, there is no reference to the change in their stance in regard to categorisation of the post, let alone an explanation for such



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31. K.K.Sasidharan,J in W.P.No.26332 of 2011 (*Dr.A.Raja V. The Anna University and others order dated 30.01.2015*) considered the challenge to an order made by the Director, Education Multimedia Research Centre, seeking Career Advancement and promotion and other service benefits to that petitioner who was holding the post of Producer in the AVRC in Anna University.

32. In that case as well, the UGC and Anna University had entered into a similar MOU holding the post of Producer as Academic. Later, there was a shift in the stands of the respondents to hold that the post of Producer did not constitute a teaching post and he was not entitled to such service benefits.

33. After considering the terms of the MOU and the order passed by the Writ Court, which is in appeal before us, that Writ Petition was allowed on 30.01.2015. As against that order, a Writ Appeal had been filed. The Division Bench noted, while disposing the Writ Appeal on 31.03.2016, that the question of age of retirement became academic, as, post the order of the Writ Court, the petitioner had been permitted to work till the age of 60 years.

34. Thus, there was a direction to the appellants to disburse to him all service benefits till the age of 60 years (to which he was entitled to). The question of law as to whether the post of Producer in Anna University would be categorized as Academic or Non-Academic was left open to be decided in an appropriate case.



35. The case of an individual appointed as Research Officer in the Educational Media Research Centre in Gujarat University, Ahmedabad, was considered by the High Court of Gujarat at Ahmedabad in Special Civil Application No.9918 of 2001 order dated 21.07.2016, wherein the decision in the case of *Dr.A.Raja* (supra) was cited.

36. The Bench expressed the view that there had been no satisfactory reply from the respondents in regard to the classification of the post. The Court noted that the UGC could have provided some clarity, particularly having regard to the terms entered into by them with various Universities under the Memorandum of Understanding. Thus, the Writ Petition was disposed with a direction to the respondents to take the issue up once again with the UGC and after obtaining the opinion of the UGC, take a fresh decision in the matter.

37. Respondent No.4, i.e., Director, Educational Media & Research Centre was directed to draw the attention of UGC to the Memorandum of Understanding specifically clause (D) 4.8 as well as the decision in the case of *Dr.A.Raja* and then pass an order thereafter. Learned counsel appearing for the UGC has no instructions in this regard despite the lapse of more than 7 years from the date of the Gujarat High Court decision.

38. One thing is clear. All the Courts before whom this issue has been raised have opined that it is the UGC that must provide clarity on the categorization of the posts in the EMRC/AVRC. However, they have also noted the contradiction in the stands of the UGC, when compared between (i)



letters and MOU between UGC and the concerned University (in favour of the candidate) and subsequent letters where the UGC takes a contrary stand (adverse to the candidate).

39. This Bench has been at pains to elicit some assistance from the UGC in the matter before us, but to no avail. In fact, it is the University which has been pursuing the matter in right earnest. The directions by the Writ Court are based on the confirmation from UGC in its letter, the MOU entered into between the parties and the Resolution of the University Syndicate. We find that UGC has not evinced any interest in the matter to provide the required clarity, in a sense, abdicating the responsibility cast upon it to provide necessary explanations.

40. This position will thus, in our view, enure in favour of the respondent, that is to say, we confirm the order of the Writ Court and dismiss this Writ Appeal. No costs.

**[A.S.M.J.,] & [R.V.J.,]
21.12.2023**

NCC :Yes/No
Index :Yes/No
Internet :Yes
Sm/sl

TO

1. The Secretary,
University Grants Commission,
Bahadur Shah Zafar Marg,
New Delhi – 110 002.



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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

Sm/sl

Pre -delivery Judgment made in
W.A.(MD)No.201 of 2012

Dated:
21.12.2023