

SUPREME COURT OF INDIA

P.Gopinathan Pillai

Vs.

University Of Kerala

C.A.No.1641 of 2020

(Ashok Bhushan and M.R.Shah,JJ.,)

08.04.2020

JUDGMENT

Ashok Bhushan, J.

SLP(C)No.26880 of 2016

1. This appeal has been filed by the appellant for quashing the judgment of Kerala High Court dated 08.07.2016 by which Writ Petition (C)No.12179 of 2016 filed by the appellant claiming to continue in service till he attains the age of 60 years has been dismissed.

2. The brief facts of the case for deciding this appeal are:

The appellant was appointed as Project Officer in the Centre for Adult Continuing Education and Extension (hereinafter referred to as "CACEE"). The appellant joined at the CACEE with effect from 26.12.1989. By letter dated 01.02.1990 of the Deputy Registrar of the University of Kerala, University accorded sanction to the appointment of the appellant as Project Officer against the post at the CACEE. The University of Kerala has also implemented the University Grants Commission (UGC) scale of pay to the CACEE staff. The appellant was also given the UGC pay scale. The Centre has issued various certificates to the appellant that he has been teaching various courses like the Post Graduate Diploma etc. On 07.12.2012, the appellant was promoted as Assistant Director in the CACEE. The University Grants Commission revised the scale of pay of the CACEE at par i.e. Director, Assistant Director and Project Officer corresponding to the pay scale of Associate Professor, Assistant Professor, Reader, Lecturer. Writ Petition (C) No.12179 of 2016 was filed by the appellant before the High Court of Kerala seeking a declaration that the appellant is a Teacher of the University of Kerala and entitled to continue in service upto the age of 60 years.

3. The appellant's case was that he cannot be retired at the age of 56 years. The appellant in his writ petition relied on earlier judgments of the Kerala High Court including judgment delivered by the High Court with regard to the post of Director and Assistant Director of CACEE itself. The appellant also filed certificates issued by the Centre to the

appellant that he while working in the Centre has been associated with Teaching Research Extension and other activities. When the writ petition came for consideration before a learned Single Judge, noticing a conflict between two judgments i.e. in (1) W.A. 1099 of 1988 and (2) W.A. 180 of 1992, the learned Single Judge referred the matter to be heard by a Division Bench.

4. The case of the appellant was contested by the University. The Division Bench after scanning the two judgments with regard to which conflict was noticed, observed that the said judgments were delivered in the peculiar facts and circumstances arising in each case and there was no justification for reference. The Division Bench proceeded to consider the merits of the controversy and held that the appellant is not a Teacher of the University and is not entitled to continue till the age of 60 years. The writ petition was consequently dismissed. Aggrieved by the judgment of the Division Bench, this appeal has filed by the appellant.

5. We have heard Shri A. Raghunath, learned counsel appearing for the appellant and Shri Jogy Scaria, learned counsel for the respondent.

6. Learned counsel for the appellant submits that the appellant is working as Assistant Director in CACEE, a Teacher defined in Section 2(27) and 2(28) of the Kerala University Act, 1974, hence, he is entitled to all the benefits of a Teacher of the University including the age of retirement being 60 years. It is submitted that the University of Kerala itself placed the appellant in the senior scale for lecturer under the UGC Scheme with effect from 24.05.1997.

7. Learned counsel for the appellant submits that UGC way back in 1993 directed that the staff working in CACEE be treated at par with other Teaching staff working in other faculties of the Universities. It is submitted that the High Court of Kerala has delivered several judgments declaring that the staff of CACEE particularly posts of Project Director, Assistant Director etc. are 'Teachers' and entitled to continue till the age of 60 years.

8. Learned counsel for the appellant referring to various certificates issued by CACEE submits that the appellant has been recognised as being engaged in teaching and research work. It is submitted that the High Court erred in dismissing the writ petition of the appellant by holding that the appellant is not the Teacher of the University as defined in Section 2(28) of the Kerala University Act.

9. Learned counsel for the University refuting the submissions of the learned counsel for the appellant contends that CACEE in which the appellant was employed is not a Statutory University Department of study and research as defined in the statutes of the University. CACEE is not affiliated to the University. CACEE is one of the many Schemes sponsored by outside funding Agencies like UGC. Initially CACEE was started on a temporary basis as a planned Scheme established by the Government of India for the purpose of eradicating illiteracy in the society and was operative till 31.03.1997. No Agency having come forward to sponsor the Scheme. The Syndicate of the University taking into account the despair of the staff took a view and resolved to restructure CACEE as a Self-Supporting Centre. The normal date of the retirement of the employees

of CACEE is 56 years, some of the employees of CACEE who were allowed to continue upto to the age of 60 years wherever there was direction of the High Court in respective cases. The appellant was never appointed on a teaching post rather he was appointed on an administrative post which was a temporary post. The judgments of the Kerala High Court relied by the counsel for the appellant are distinguishable and they were delivered in the facts of each case.

10. We have considered the submissions of learned counsel for the parties and perused the records.

11. The only point to be determined in this appeal is as to whether the appellant working as Assistant Director in CACEE was entitled to continue till 60 years of age which was the age of retirement of Teacher of the Kerala University or he was to retire at the age of 56 years.

12. The claim in the writ petition was that he is a Teacher of the University within the meaning of Kerala University Act, 1974. Hence, he was entitled for the benefit of retirement of the age as prescribed for the Teachers of the University. We may first notice the provisions of the Kerala University Act, 1974, the Kerala University First Statutes, 1977 and Kerala University First Ordinances, 1978.

13. Section 2 of the Kerala University Act, 1974 is a definition clause. Section 2 sub-section (2) defines 'affiliated college'. Section 2(7) defines 'college'. Section 2(19) defines 'recognised institution'. Section 2(27) defines 'teacher' and Section 2(28) defines 'teacher of the University'.

14. In the Kerala University First Statutes, 1977, Statute 2 sub-clause (f) defines 'Department' which is to the following effect:

"Section 2(f)"Department" means a Kerala University Department of Study and/or Research or a Department functioning for a specific purpose maintenance at the cost of the Kerala University Fund;"

15. Chapter 3 of the Statutes deals with "Teachers of the University". Statute 10 under Chapter 3 is as follows:

"10. Applicability of certain Rules to University Teachers.- Subject to the provisions of the Kerala University Act, 1974 and the Statutes' issued thereunder, the Kerala Service Rules, the Kerala State and Subordinate Service Rules, and the Kerala Government Servant's Conduct Rules for the time being in force as amended from time to time shall mutatis mutandis apply to the teachers of the University, with such modifications as the context may require and the expression "Government" in those Rules shall be construed as a reference to the "University". Provided that the age of retirement of teachers of the University shall be 60."

16. The Kerala University First Ordinances, 1978, Chapter XVII deals with scales of pay, qualification etc. of various posts in the University. The Schedule to the Ordinances

contains details of all the posts in the University including the posts in different Departments, Institutes, Colleges.

17. The appellant admittedly was appointed in CACEE with effect from 26.12.1989 which received the sanction of the University by letter dated 01.02.1990. Letter dated 01.02.1990 has been brought on the record as Annexure-P-2. The Order dated 01.02.1990 reads:

"ORDER

Selection was made to the posts of Assistant Directors and Project Officers in the Centre for Adult Education and Extension, University of Kerala. The Director, Centre for Adult Education and Extension has, vide his letter read above, reported that the following officers have reported for duty.

1. Dr. V. Reghu- Assistant Director
2. Smt. A.R. Supriya -Assistant Director
3. Sri.P. Gopinathan Pillai -Project Officer
4. Sri. K. Mohandas -Project Officer

Sanction has therefore been accorded by the Vice Chancellor to:-

"All the above appointments are made against the posts at the Centre for Adult Education and Extension created temporarily till 31.03.1990 coming under Point No.16 of the new 20 point programme relating to eradication of illiteracy and spread of Universal Elementary Education.

K.M. MATHEW
DEPUTY REGISTRAR (Admn-1)"

18. The judgment of the High Court does not mention any details of the establishment, nature and organisation of the Centre i.e. CACEE. However, in the counter-affidavit (sworn by Dr. M. Jayaprakas, Registrar-in-charge of the University of Kerala) filed in this appeal, the details of Centre have been elaborately pleaded. Paragraphs 5 and 6 of the counter-affidavit which are relevant for the present case are as follows:

"5. It is submitted that Centre for Adult continuing Education and Extension (CACEE) in which the petitioner was an employee is not a Department or Institution instituted by Kerala University Authorities viz, the Senate, Syndicate or any other statutory body under the provisions of the aforesaid Act or Statutes. But the CACEE is one of the many schemes sponsored by outside funding agencies like UGC.

6. The Centre for Adult continuing Education and Extension (hereinafter referred as CACEE) is not a Department or an institution or even a Study Centre instituted under the Kerala University Act, Statutes or Regulations. CACEE was only one among the schemes sponsored and functioning by way of funding from outside agencies like the UGC. Initially CACEE was started on a temporary basis as a planned Scheme established by the Government of India, for the purpose of

eradicating illiteracy in the society and was operative till 31.03.1997. Thereafter no agency had come forward to sponsor the scheme. All members, including the staff were under the threat of termination from service. In such circumstances, the Syndicate of the Respondents taking into account the despair of the staff, took a lenient view and resolved to restructure, CACEE, as a Self-Supporting Centre, on the specific ground that the total expenditure of the Scheme, should be limited to the revenue generated and remitted to the Kerala University, by the Scheme. The Syndicate further resolved that the salary for the staff of CACEE would be paid out of the fund remitted to the University, and in return, the University would render all the Administrative work of CACEE, without any overhead charges or fee. As per the terms of the Scheme, the staff therein, were to retire at the age of 56. The service conditions, of a member under the Kerala University Service, are governed by the Kerala University Act, Statutes and Ordinances. All members under the Kerala University service are appointed against posts instituted as per the Kerala University Act, Rules and Regulations. Facts being so, the staff under CACEE, are not governed by the Kerala University Act. Ordinance, and Statutes as they are not members under the Kerala University Service."

19. Although rejoinder-affidavit has been filed by the appellant to the above counter-affidavit of the University but neither there is any reply to the counter-affidavit nor details mentioned in paragraphs 5 and 6 of the counter-affidavit regarding nature of the establishment of the Centre has been refuted. We, thus, proceed to rely on the pleadings made in the counter-affidavit regarding the establishment and the nature of the Centre.

20. The Centre i.e. CACEE came to be established on temporary basis as planned Scheme established by the Government of India for the purpose of eradicating illiteracy. The University Grants Commission also funded the Centre and as pleaded in the counter affidavit after 31.03.1997 no Agency having come forward to sponsor the Scheme the Syndicate of the University resolved to restructure CACEE as a Self-Supporting Centre. The University has undertaken to render all the Administrative work of CACEE.

21. The Schedule to the First Ordinances, 1978 of the Kerala University contains designations of all posts of University including teaching and non-teaching posts in various Departments and Centres like University, Service and Instructions Centres, Computer Centre, English Language Teaching Centre but posts in CACEE are not included in the Schedule of the Ordinances which obviously indicates that posts in Centre are not posts in the University. Chapter 3 of the Statutes of the University specifically provides for the Institution of Posts. Statute 1 under Chapter 3 is as follows:

"1. Institution of Posts.- The Senate shall be competent to institute Professorships, Readerships, Lecturerships, and such other teaching and research posts required by the University on the motion of the Syndicate and/or on the proposals of the Academic Council therefore endorsed by the Syndicate."

22. Had all the posts in the Centre have been instituted by Senate, they ought to have been included in the University, the posts of the Centre are not the posts instituted by the Syndicate and not the posts of the University.

23. We come to the definition of Teacher as defined in Section 2 of the Kerala University Act, 1974. Section 2(27) provides as:

"2(27) "teacher" means a principal, professor, associate professor, assistant professor, reader, lecturer, instructor, or such other person imparting instruction or supervising research in any of the colleges or recognised institutions and whose appointment has been approved by the University;"

24. The condition precedent is that such person should be imparting instruction or supervising research in any of the Colleges of the recognised institutions. Section 2(28) reads as:

"2(28)."teacher of the University" means a person employed as teacher in any institution maintained by the University."

25. College and recognised institution have been defined in Section 2(7) and 2(19) as follows:

"2(7). "college" means an institution maintained by, or affiliated to the University, in which instruction is provided in accordance with the provisions of the Statutes, Ordinances and Regulations;

2(19). "recognised institution" means an institution for research or special studies, other than an affiliated college recognised as such by the University;"

26. The Centre is not a College within the meaning of Section 2(7) since as per the pleadings of the University, Centre is neither maintained nor affiliated to the University. There are no materials on record also to indicate that the Centre is an institution recognised by the University within the meaning of Section 2(19). It is true that the Centre is being run as a Centre under the administrative control of the University. The definition of Teacher of University in Section 2(28) also refers to a person employed as Teacher in any institution maintained by the University. The High Court in the impugned judgment has held that the appellant was never employed as Teacher hence he is not covered by Section 2(28). From the pleadings on the record and the materials which are brought on the record it is apparent that the appellant is not covered by definition of Teacher or the Teacher of the University under Section 2(27) and 2(28) of the Kerala University Act, 1974. When the appellant does not fulfil the requirement of definition of Teacher or Teacher of University, he cannot claim applicability of Statute 10 of Chapter 3 of the Statutes.

27. Much emphasis has been laid down by the learned counsel for the appellant on different certificates issued by the Centre where it has been mentioned that the appellant is imparting instruction in various courses like Post Graduate Diploma in Extension and Field Outreach, Diploma in Non-Formal Education, Master of Human Resource Management and PG Certificate Courses etc. Even if it is assumed that the appellant is imparting instruction in different courses in the Centre that itself cannot make the appellant Teacher within the meaning of Section 2(27) and 2(28). The appellant having

never been appointed as Teacher he is not covered by the definition of Teacher of the University.

28. Now we need to notice various judgments of the Kerala High Court which have been relied by the learned counsel for the appellant in support of his case. The first judgment which has been relied by the learned counsel for the appellant and has also been relied in subsequent judgments of the Kerala High Court itself is a Division Bench judgment in C.A.No.180 of 1992D decided on 20.07.2000 in Dr. K. Sivadasan Pillai vs. The University of Kerala and others. Dr. Pillai was working as a Reader in the Department of Education of the University of Kerala whereafter he was appointed as Director of the Centre i.e. CACEE. The writ petition filed by Dr. Pillai was dismissed hence the appeal was filed. The Division Bench granted interim stay under which Dr. Sivadasan was continued in the post and retired at the age of 60 years. The Division Bench in its decision made following observation in paragraph 2 of the judgment:

"2 The appellant/petitioner was a Reader in the University. Thereafter he was selected and appointed as the Director of Centre for Adult Education and Extension. The Pro-Vice Chancellor of the University had given a certificate, Annexure IX, wherein it is stated that appellant/petitioner, Director, Centre for Adult Education and Extension, University of Kerala, was teaching students of Post Masters Diploma in Adult Education and Continuing Education while he was the Pro-Vice-Chancellor of the University. Several other documents were also produced by the appellant/petitioner to show that he was holding the post of teaching as a Director in the Adult Education Department. It is contended that appellant/petitioner did not produce these documents in the original petition because there was no such counter by the University."

29. Dr, Sivadasan worked as Reader in the University and finally continued till 60 years because as Reader he was admittedly worked as a Teacher of the University. It appears that before he attained the age of superannuation as Teacher, he was appointed as Director of the Centre, he had lien on the post of Reader as well as he was entitled to continue till the age of 60 years with all retiral benefits. The conclusion of the High Court itself was to the following effect:

"3 The documents produced by the petitioner shows that he was holding the post of Teacher while he was working as Director in the Centre for Adult Education and Extension."

30. The above case, thus, was a case where the appellant was holding a Teaching post in the University and thereafter, he was appointed as Director and had rightly held by the High Court to continue him till 60 years.

31. The next judgment relied by the counsel for the appellant is the judgment of Kerala High Court dated 14.06.2005 in W.P.(C) No.3141 of 2004(Y), Dr. B. Vijayakumar vs. The University of Kerala and others. In the above case the writ-petitioner was also working as Director, and reliance was placed on the judgment in Writ Appeal No.180 of 1992. The learned Single Judge relying on the Division Bench judgment in Dr. Sivadasan

Pillai allowed the writ petition. In paragraph 3 of the judgment learned Single Judge himself has observed as follows:

"3. The Learned Counsel for the University would submit that the said Dr. K. Sivadasan Pillai was retaining his lien in the Department of Education and therefore his case cannot be treated at par with that of the petitioner. When a Division Bench of this Court categorically holds that the post of Director in CACEE is the post of a teacher and therefore the incumbent is Entitled to continue till he attains the age of 60 years, then I need not look any further to hold that the petitioner also is holding the post of teacher and therefore entitled to continue till he attains 60 years of age. Therefore, I have absolutely no hesitation in holding that the petitioner is holding the post of a teacher as Director in the CACEE. As such, he is entitled to continue in service till he attains the age of 60 years. It is declared so. The petitioner will be entitled to all consequential benefits. The Writ Petition is allowed as above but without no order as to costs."

32. Learned Single Judge although noted the distinguishing feature of case of Dr. Pillai that he had lien in the Department of Education, but without adverting to the distinguish facts of Division Bench judgment and without adverting as to how the writ petitioner was a Teacher within the meaning of Kerala University Act, the writ petition was allowed. The above judgment of the learned Single Judge having mechanically followed the Division Bench judgment in W.A.No.180 of 1992 cannot come to the rescue of the appellant.

33. Another judgment relied by the appellant is the judgment of the Kerala High Court dated 14.02.2006 in Writ Petition (C) No.25669 of 2004(E) in Dr. V. Reghu vs. The University of Kerala and another. Learned Single Judge in the above case also relying on the Division Bench judgment in W.A. No.180 of 1992 filed by Dr.K. Sivadasan Pillai has made the following observation in paragraph 8:

"8 There is overwhelming evidence and materials on record to show that the petitioner by discharging the duties of Assistant Director of CACEE has been imparting instruction at the Centre right from his appointment in the year 1980."

34. Learned Single Judge has, thus, relied on the claim of the writ petitioner that while discharging the duty of Assistant Director the petitioner has been imparting instruction at the Centre. How only by imparting instruction the petitioner had become Teacher within the meaning of Section 2(27) and 2(28) was neither been dealt with nor considered.

35. Another case which has been relied by the appellant is judgment dated 25.05.2012 in W.P. (C)No.15447 of 2007(L), M.N.C. Bose vs. University of Kerala and Ors. In the above case, the writ petitioner was working as Director of Students Services which was a non-teaching post as per Ordinances of the University which fact was noticed in paragraph 2 of the judgment. Learned Single Judge proceeded to held that while working as Director of Students Services the writ petitioner as per duties and functions was imparting instruction. The said case has no relevance in the facts of the present case since the post of Students Services was admittedly post within the University whereas the none

of the posts in Centre is included in the Ordinances hence the said case is clearly distinguishable.

36. Learned counsel for the appellant has also relied on the judgment of this Court in *S. Ramamohana Rao vs. A.P. Agricultural University and another*¹, In the above case the appellant was working as a Director of Physical Director in the Bapatla Agricultural College. The appellant was initially appointed as Physical Director in Agricultural College which was a Government College which College stood transferred to the Andhra Pradesh University, when it was formed, the services of the appellant stood transferred to the Agricultural University and he continued to work as Director in the said University. This Court noted the definition of Teacher in the University Statutes and came to the conclusion that Physical Director is also Teacher within the meaning of Section 2(n) of the Andhra Pradesh Agricultural University Act, 1963. The said judgment has no bearing in the present case since admittedly the appellant in the said case was working in the University as Director of Physical Education.

37. We may also notice one of the letters dated 31.10.2014 brought on record as Annexure-P-17 to the petition which is a communication by the Government of Kerala according sanction for merging the Centre for Adult, Continuing Education & Extension which is to the following effect:

"ORDER

Sanction is accorded for merging the Centre for Adult, Continuing Education & Extension (CACEE) which is functioning as Self Financing Centre under the University of Kerala, with Institute of Distance Education so that the department can function in dual mode as Institute of Distance and Adult Continuing Education.

(By order of the Governor)

Dr. K.M. ABRAHAM Additional Chief Secretary."

38. As per the Government letter Centre has been merged with Institute of Distance Education, what are the consequences of merger of Centre with Institute of Distance Education have neither been explained by the appellant nor there are any material to come to the conclusion that by such merger the Centre shall become Centre maintained by the University. The above letter of the Government also supports our conclusion that Centre is not maintained by the University and it is Self-Financing Centre. The said letter also in no manner supports the case of the appellant as the claim of the appellant as raised in this appeal.

39. In view of the foregoing discussion, we do not find any merit in the appeal which is dismissed accordingly.

Judgment Referred.

¹(1997) 8 SCC 0350