



- Home
- Physical education charter.
- Application form
- Executive Body
- Online Journal
- Directory
- Related G.Os
- Sports Policies (Secondary Education)
- National Sports Policies
- Youth affairs
- Judgments
- Articles
- Gallery
- Feedback
- Related links

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Judgements:

(BEFORE SUJATHA V. MANOHAR AND M. JGANNADHA RAO. JJ)

P.S. RAMAMOHANA RAO

APPELLANT

VERSUS

A.P. AGRICULTURE UNIVERSITY

AND ANOTHER

RESPONDENT

Civil Appeal No: 898 of 1992. Decided on July 31. 1997.

A. service Law Teacher Physical Director in a University - Held on facts was entitled to retire only at 60 years as per Regulation 33(a) - Words and Phrases "Teacher", Interpretation of - Andhra Pradesh Agriculture University Act.1963(24 of 1963).SS.2(n) and -40 - Andhra Pradesh Agriculture University (Conditions of Service) Regulations. 1965. Regn. 33.

B. Service Law-Retirement- Age of Retirement -Premature retirement by wrong interpretation of rules Relief is which can be granted by the court - Emoluments allowed up to 60 years and retiral benefits also director to be determined accordingly.

- a. The question in this case was whether Physical Director in Andhra Pradesh Agriculture University was a "teacher" entitled to 60 years of retirement age in accordance with regulation 33(a) of the Andhra Pradesh Agricultural University (Conditions of Service) Regulation: 1965, or, was he an "employee" whose retirement age was 58 years prescribed in Regulations. 33(b) (i) According to Section 2(n) of the Andhra Pradesh Act, 1963 'teacher' "includes a professor, reader or the other person appointed or recognized by the University for the purpose of imparting instruction or conducting and guiding research or extension programs, and any person declared by the status to be a teacher." The University itself indicated the following duties of Physical Director (a) to arrange games and sports daily in the evening for the students. (b) to look after the procurement of sports and the maintenance of the sports grounds. (c) to arrange inter class and inter college 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."

Held:

The 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 accompany the students.

d. team which they go for the inter -university tournaments. For that purpose, it is one of his important.

From the Judgment and Order dated 2H-t-89 of the Andhra Pradesh High Court in W.P.No 12751 of 1988.

direct to guide them about the rules of the various games and sports. 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 participate in the sports in a proper manner. It is inherent in the duties of a Physical Director that he imparts to the students various skills and technique of these games and sports. There are a large number of indoor and outdoor games in which the students have to be trained. Therefore, he has to teach them several skills and techniques of these games apart from the rules applicable to these games. The Physical director therefore comes within the definition of a teacher in Section 2(n) of the Act.

(Paras 9 to 10)

The above conclusion is supported by various communications (referred to in paras 11 to 14 of the judgment) in which the Physical Director has been treated as a teacher.

(Paras 14 and 15)

Physical Directors come within the main part of the definition of "teacher" and therefore it is not recognised as teachers by an order of the University.

(Para 17)

It may be that the Physical Director gives his guidance or teaching to the students only in the evenings after the regular classes are over. It may also be that the University has not prescribed in writing any theoretical and practical classes for the students so far as physical education is concerned. But amongst various duties of the Physical Director, expressly or otherwise, are included the duty to teach the skills of various games as well as their rules and practices. The said duties bring him within the main part of the definition as a "teacher".

(Para 19)

It is therefore declared that the appellant was entitled to continue in service till he completed 60 years of age. Now that he has retired, he is entitled to the emoluments payable to him for the remain period of service up to the completion of 60 years deducting the period for which he worked as Physical Director beyond 58 years pursuant to stay orders granted by the High Court. His retiral benefits shall also be computed on the basis that his age of retirement was 60 years.

(Para 20)

Appeal allowed

K-O-M/ATSCF/18340/CLA

Advocate who appeared in this case :

I. N. Rao, G. R. K. Prasad, V. Sridhar and Ms Vrinda Dhar, Advocates, for the Appellant;

F. V. S. N. Chari, Advocate, for the Respondents

The judgment of the Court was delivered by

MR. JAGANNADHA ROA, J. - This appeal has been preferred against the judgment of the Andhra Pradesh High Court in Writ Petition No. 12731 of 1988 dated 28-04-89 by which a Division Bench of the High Court dismissed the writ petition filed by the appellant. The question that falls for consideration in this appeal is whether the appellant is entitled to be continued in service of the Andhra Pradesh Agricultural University as a Director of Physical Education till he completed 60 years or whether he is liable to superannuate after completion of 58 years?

The facts of the case are as follows:

The appellant was initially employed as a Physical Director in the Baptist Agricultural College, a Government college with effect from 1-8-1956. The Andhra Pradesh Agricultural University was

the Act under the Andhra Pradesh Act 1963(24 of 1963) (hereinafter called the Act) and the physical college stood transferred to the said university by virtue of section 43 of the said Act. The services of the appellant therefore, stood transferred to the said University by virtue of Section 43 of the said Act w.e.f. 04-05-1964. The service of the appellant, therefore, stood transferred to the Agriculture University accordingly and the appellant continued to work as Physical Director in the said University. When the appellant was about to complete 58 years, the respondent University sought to retire him on the completion of 58 years. The appellant filed a writ petition in the High Court and initially obtained an order of stay. By virtue thereof he continued for some time as Physical Director beyond 58 years but subsequently the stay was vacated. According to the appellant the respondent was not right in contending that the age of superannuation for Physical Director in the University is 58 years. He contends that he is entitled to continue till he completed 60 years as he is also a "teacher" within the meaning of the said words in Section 2(n) of the Act. Now that the appellant has retired, the decision in this case will be relevant only for the purpose of grant of emoluments of 60 years and also for the purpose of computing his retiral benefits.

3. The learned counsel for the appellant contended by virtue of the definition of teachers in Section 2(n) read along with the material available on record, the appellant come within the main part of the definition of teacher and that the High Court was wrong in coming to a contrary conclusion. According to him the definition in Section 2(n) is an inclusive one and, therefore, must be interpreted as extending to persons other than those included within the inclusionary part of the section, and who come within the main part of the definition. The learned counsel also referred us to Regulation 3 and 33 of the Regulation dated 09-12-1965 prescribed in regard to the condition of service of teachers and other employees of the University. The counsel also relied upon a letter of the Joint Registrar of the University dated 29-07-1976 and the proceedings of the Education Department of the State Government dated 29-11-1976 and 20-04-1987 to contend that a Physical Director was treated as a "teacher" and was not therefore outside the definition of "teacher". He also relied upon the additional affidavit filed by the respondent in the Andhra Pradesh High Court to say that going by the duties of the Physical Director as set out in the said additional affidavit, he must be deemed to be a teacher. On the above basis, he contended that the age of superannuation is 60 years applicable to teachers and not 58 years which was applicable to certain other categories of employees.

4. On the other hand, learned counsel for the University, contended that Physical Director was not a "teacher" within the meaning of the said expression in Section 2(n) of the Act and that he could not be continued till he completed 60 years. There was no regular curriculum or syllabus for physical education and merely because he was helping the students in sports and games and for participate in certain competition, he could not be called a teacher.

5. For the purpose of deciding the above issue arising between the parties, it is necessary to refer to the relevant provision of the Act and the Regulations. Clause(n) of Section 2 defined "teacher" as follows:
(n) "teacher" include a professor, reader, lecturer or other person appointed or recognized 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.

6. Regulation 33 (as amended on 27-04-1976) of the Regulation deals with the presumption of the age of superannuation and, insofar as it is material, read as follows:

(3) (a) The age of retirement for teacher shall be 60 years provided that it shall be competent for the appointing authority to review the case of any teacher at any time after he attains the age of 58 years and retire him, without assigning any reason, giving three months' prior notice or after payment him three months' salary in lieu of such notice.

(b) (i) The age of retirement of the employees other than those mentioned in Class III and Class IV employees from service in public interest, after giving him at least three months notice or at least three months salary in lieu of such notice at any time after completing twenty-five years of qualifying service or attaining fifty years of age.

(ii) The age of retirement of the Class IV employees shall be 60 years, provided that the appointed authority may retire an employee from service in public interest, after giving him at least 3 months salary in lieu of such notice at any time after completing twenty-five years of qualifying service or attaining fifty-five years of age".

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 Regulation.

8 Neither the Act nor the rules and regulation specify the duties and functions of a Physical Director. We have, therefore, to go by the material available in the affidavit filed on behalf of the University in the High Court. It is stated in para 7 as follows:

"I further submit that the duties of the Physical Director in the 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 ground but also arranges inter-class and inter-college tournament and accompanies the students' teams 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 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 a large number of indoor and outdoor games in which the students have to be trained. Therefore, he has to teach them several skills and techniques of these games apart from the rules applicable to these games.

10 In regard to the above said before us, we are clearly of the view that the appellant comes within the definition of a teacher in sub-clause (i) of Section 2, of the Act.

11 We also here refer to certain proceeding relied upon by the learned counsel for the appellant, the same is to the University Grants Commission in a letter dated 07-01-1959 addressed to the Secretary of the Agriculture University in connection with the upgrading of the scales of pay of Physical Directors referred to the minimum qualification required for an appointment of a Physical Director and in the said letter described Physical Directors as teachers. The relevant portion of the said letter reads as follows:

"I am directed to state that the University Grants Commission considered the question of upgrading the salary scales of teacher of Physical Education in University and colleges and decided as follows.

1 The minimum qualification for appointment as a Director of Physical Education or a
 2 Physical Instructor in University and Colleges should be a Postgraduate Diploma (or certificate) or
 3 Degree in Physical Education. Person with such qualification may be appointed in the same scale of
 4 pay as a Reader. The University may be appointed in the scale of pay of Readers if the University so desire. Persons
 5 with lower qualifications may be appointed on the same terms as Tutor and Demonstrators. These
 6 teachers of Physical Education may be included among the teaching staff of college and university
 7 for purpose of revision of salary scales

8 I am to request you to furnish the information in respect of the existing Physical Instructors in the
 9 University and colleges in the enclosed pro formas, with a commitment to share the increased cost at
 10 70% in the case of University teachers and 50% / 25% in the case of college teachers consequent
 11 upon the fixation of their salaries in the revised grades. If the schemes of upgrading the salary scales
 12 of teachers of Physical Education as detailed above is acceptable to the University / College, the
 13 date of the implementation of the scheme will be the same as for the other teachers, viz. 01-04-1956
 14 in the case of university teachers and 01-04-1957 in respect of college teachers "

15 In fact, it is clear from the above that while computing the percentage of teachers as mentioned in
 16 para 2 of the said letter, Physical Directors have also to be counted

17 There is a memorandum of the Joint Registrar of the said University dated 29-04-1966 dealing with
 18 the case of one M Hanumantha Rao, Physical Director in connecting with his retirement. It is
 19 clearly admitted that a Physical Director comes within the category of teachers. The relevant part of
 20 the said letter reads as follows:

21 "With reference to his letter cited, the Principal Agricultural College,
 22 Bapatla is informed that the Physical Directors working in the Colleges under the Andhra Pradesh
 23 Agriculture University comes under the category of teacher staff and that the age of retirement for
 24 such employees has been prescribed in the Andhra Pradesh Agriculture University (Conditions of
 25 Service) Regulation 1965 "

26 In connection with the Physical Directors working in Degree Colleges and Junior Colleges the
 27 Education Department of the Andhra Pradesh Government has issued proceedings dated 29-11-1976
 28 and in the said proceeding Physical Directors have been described as teachers for the purpose of the
 29 applications of the Andhra Pradesh General Subordinate in the State, the Government of a Andhra
 30 Pradesh Education Directors as Lecturers in Physical Education

31 We are of the view that the above said communications of the University Grants Commission and
 32 the Joint Registrar of the respondent University and of the State Government support the view we
 33 have taken above

34 In the unaided judgment of the High Court it has been said that merely because Physical Directors
 35 are paid the same scales as the teaching staff does not confer on them the status of a teacher. There
 36 is also no discrimination if Physical Directors are retired at the age of 58 years and other teachers
 37 are allowed to retire at the age of 60 years. The High Court further said that while it was true that
 38 Section 2(a) of the Act contained an inclusive definition of
 39 teachers, the Physical Directors did not come within the categories mentioned in the inclusive
 40 definition. They are neither Professors nor Readers nor Lecturers nor were they persons appointed of
 41 or by the University for the purpose of imparting instruction or conducting and guiding
 42 school or extension programmes

43 In fact, the learned Judges did not go into the meaning of the word "teacher" in the main part of
 44 the clause nor assessed correctly the assuming Physical Directors imparted instructions to their
 45 students. Unless the University recognized them as teachers they could not claim the benefits of
 46 Section 2(a) of the Act obviously the learned Judges were referring to the part of
 47 section 2(a) which includes persons other than those ^{enumerated in} the inclusive part if so recognized by the



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