

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

WP(C).No. 31651 of 2015 (F)

PETITIONER(S):

THOMAS T.J.,
RETIRED COACH IN SWIMMING,
SCHOOL OF PHYSICAL EDUCATION AND SPORTS SCIENCE,
MAHATMA GANDHI UNIVERSITY,
KOTTAYAM, RESIDING AT THOPPIL HOUSE,
VELLIAPPALLY P.O., PALA 686 574, KOTTAYAM DIST.

BY ADVS.SRI.SAJU JOHN
SRI.JELSON J.EDAMPADAM

RESPONDENT(S):

1. THE MAHATMA GANDHI UNIVERSITY,
REPRESENTED BY ITS REGISTRAR,
PRIYADARSHINI HILLS P.O., ATHIRAMPUZHA,
KOTTAYAM - 686 560.
2. THE VICE CHANCELLOR,
MAHATMA GANDHI UNIVERSITY,
PRIYADARSINI HILLS P.O. ATHIRAMPUZHA, KOTTAYAM - 686 560.
3. THE JOINT DIRECTOR,
OFFICE OF THE JOINT DIRECTOR OF LOCAL FUND AUDIT,
M.G. UNIVERSITY AUDIT, ATHIRAMPUZHA P.O.,
KOTTAYAM - 686 560.

R1 & R2 BY ADV. SRI.VARUGHESE M.EASO, SC, M.G.UNIVERSITY
R3 BY GOVERNMENT PLEADER SRI.T.R.RAJESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
23-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. TRUE COPY OF THE PAGE NO.12 OF THE SERVICE BOOK OF THE PETITIONER MAINTAINED BY THE KERALA SPORTS COUNCIL.
- EXT.P2. TRUE COPY OF THE SERVICE CERTIFICATE DATED 24.11.1997 ISSUED BY THE SECRETARY OF THE KERALA SPORTS COUNCIL EVIDENCING THAT THE PETITIONER HAD BEEN WORKING AS A SWIMMING COACH IN THE KERALA SPORTS COUNCIL, DURING THE PERIOD FROM 21.8.1980 TO 10.12.1985.
- EXT.P3. TRUE COPY OF THE ORDER NO.3378/31/127/95/AV(3) ADMN. DATED 3.1.2002 OF THE 1ST RESPONDENT.
- EXT.P4. TRUE COPY OF THE RESOLUTION DATED 13.12.2010 OF THE SYNDICATE OF THE MAHATMA GANDHI UNIVERSITY.
- EXT.P5. TRUE COPY OF THE ORDER NO.1572/2000/AV(3) ADMN. DATED 24.8.2002 OF THE 1ST RESPONDENT.
- EXT.P6. TRUE COPY OF THE LETTER NO.AUDIT III DATED 14.6.12 ISSUED BY THE FINANCE OFFICER OF THE 1ST RESPONDENT TO THE PETITIONER.
- EXT.P7. TRUE COPY OF THE LETTER NO.F.MGU A4-425/2012 DATED 30.10.2012 OF THE 3RD RESPONDENT.
- EXT.P8. TRUE COPY OF THE UNIVERSITY ORDER NO.4824/A VIII/2013/ADMN. DATED 9.9.2013.
- EXT.P9. TRUE COPY OF THE U.O.NO.4613/38/AV(3)/2013/ADMN. DATED 12.9.2014 ISSUED BY THE 1ST RESPONDENT.
- EXT.P10. TRUE COPY OF THE REPRESENTATION DATED 12.9.2014 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P11. TRUE COPY OF THE RESOLUTION DATED 28.2.2015 OF THE SYNDICATE OF THE 1ST RESPONDENT UNIVERSITY.
- EXT.P12. TRUE COPY OF THE U.O.NO.1728/AV-2/2015/ADMN. DATED 26.3.2015.
- EXT.P13. TRUE COPY OF THE ORDER NO.AD.D.L.I.46152/2011 DATED 5.1.2012 OF THE UNIVERSITY.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.
.....
W.P.(C).No.31651 of 2015
.....
Dated this the 10th day of August, 2016

J U D G M E N T

The petitioner, who was a Swimming Coach under the Kerala Sports Council during the period from 21.08.1980 to 10.12.1985, resigned the said job to take up employment as a Swimming Coach in the Mahatma Gandhi University. By Ext.P2 certificate issued by the Sports Council, the erstwhile employer of the petitioner, it was clarified that the service of the petitioner under the Sports Council would be reckoned as qualifying service for the purposes of pension in accordance with Rule 29 (b) of Part III Kerala Service Rules. Ext.P4 resolution of the Syndicate of the respondent University also made it clear that the petitioner would be entitled for pensionary benefits for the services rendered under the Kerala Sports Council. The petitioner joined the respondent University as a Swimming Coach with effect from 11.12.1985. By Ext.P5 order dated 24.08.2002, the respondent University had, by an order of the same date, held that Coaches in the Department of Physical Education would retire at the age of 60 years. The effect of the said

decision was that the petitioner would have had to retire from the services of the respondent University only by 30.06.2013 the date on which he completed 60 years and this was intimated to him by Ext.P6 letter of the respondent University dated 14.06.2012. It is not in dispute that the petitioner in fact retired on superannuation from the respondent University on 30.06.2013. It would appear that by Ext.P7 audit objection dated 30.10.2012, the audit party, while considering the pension papers of the petitioner, opined that Swimming Coaches could not be treated as teachers for the purposes of the Mahatma Gandhi University Act, 1985 and the Mahatma Gandhi University Statutes, 1997, and further, since Ext.P5 decision of the University, which took the view that Coaches in the Department of Physical Education would retire only at 60 years, had not been ratified by the Government, the petitioner would have had to retire on attaining 55 years of age. As a result of Ext.P7 audit objection, the petitioner, subsequent to his retirement, was granted only a provisional pension with effect from 01.07.2013, which was calculated on the basis that the petitioner retired from service on attaining the age of 55 years. The respondent University also, by Ext.P7 order, noted that coaches under the respondent University would retire at 55 years

as pointed out in the audit objection. The Syndicate of the respondent University also resolved, by Ext.P11 resolution dated 28.02.2015, that the past service of the petitioner under the Kerala Sports Council could be reckoned as qualifying service only if there was a pro-rata contribution by the erstwhile employer, of the pension amount due to the petitioner. This decision of the Syndicate was later issued as a University order in Ext.P12 order. In the writ petition, the petitioner impugns Ext.P7 audit objection which led to the respondent University taking a stand that the petitioner had to retire from the services of the respondent University on attaining the age of 55 years and not 60 years which is when he actually retired.

2. A counter affidavit has been filed on behalf of the respondent University wherein the respondent University reiterates its stand with regard to the retirement age of the petitioner by relying on the audit objection (Ext.P7). It is also the case of the respondent University that, in order to count his past service under the Kerala Sports Council as qualifying service for the purposes of pension, the petitioner would have to ensure the remittance of pro-rata pensionary liability by the erstwhile

employer for the period during which he was working under the said employer.

3. I have heard the learned counsel appearing for the petitioner as also the learned Standing counsel for the respondent University and the learned Government Pleader for the 3rd respondent.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that, de hors Ext.P5 order of the respondent University, which took a view that Coaches in the Department of Physical Education need retire only on attaining the age of 60 years, the definition of teacher under Section 2 (29) of the Mahatma Gandhi University Act, 1985, takes within its ambit instructors and any person imparting instructions. The provisions of Statute 10 of Chapter III of the Mahatma Gandhi University Statute, 1997, indicate that the retirement age of teachers in the University shall be 60 years, and further, that the provisions of the Kerala Service Rules and the KS & SSR as also the Kerala Government Servants Conduct Rules, 1960, as amended from time to time shall, *mutatis mutandis*,

apply to the teachers of the University as the context may require and the expression "Government" in those Rules shall be construed as a reference to the University. I find force in the contention of the learned counsel for the petitioner that in view of the definition of teachers under Section 2 (29) of the Act, a Swimming Coach who is a person who imparts instructions in Swimming to the students in the University would also come within the ambit of the definition of teacher under the Mahatma Gandhi University Act, 1985. The learned counsel is fortified in his submissions by a Division Bench decision of this Court in **Sivasankara Kaimal v. University of Calicut (2003 (1) KLT 146)** were pari materia provisions in the Calicut University Act, 1975, where interpreted by this Court to include a Coach within the definition of teacher under the University Act. I, therefore, find that even de hors Ext.P5 order of the respondent University, which took the view that Coaches in the Department of Physical Education need retire only attaining the age of 60 years, the petitioner who was appointed as a Swimming coach can be seen as a teacher for the purposes of the Mahatma Gandhi University Act, 1985 and consequently, would have to retire only on attaining the age of 60 years as contemplated in Statute 10 of Chapter III of the Mahatma

Gandhi University Statutes, 1997. Ext.P7 audit objection to the extent it states that Coaches are not teachers for the purposes of the Mahatma Gandhi University Act, 1985 is therefore legally unsustainable. I also find that, the mere fact that Ext.P5 decision of the respondent University had not been ratified by the Government would not be of any consequence in this matter since, as already , even as per the provisions of the Statute, the petitioner being a teacher, could have continued in service till the attainment of 60 years of age. I further find that, the other objection raised against the petitioner namely, that his prior service under the Kerala Sports Council for the period from 21.08.1980 to 10.12.1985 could not be reckoned as qualifying service for the purposes of pensionary benefits, since there was no pro-rata contribution from the erstwhile employer, cannot be legally sustained. As already noticed above, Statute 10 of Chapter III of Mahatma Gandhi University Statutes, 1997, clearly indicates that the provisions of the Kerala Service Rules, as applicable to Kerala Government servants, would also apply to teachers and a reference in those Rules to Government would have to be treated as a reference to the University. It is therefore that, when the respondent University by Ext.P4 resolution dated 13.12.2010

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found that the petitioner would be entitled to reckon his past service under the Kerala Sports Council in the computation of qualifying service for pensionary benefits, it was a decision that could have been taken by the respondent University in accordance with the statutory provisions and the same did not need any ratification by the Government. I, therefore, find that the non-ratification of Ext.P4 resolution by the Government cannot be a ground to deny his pensionary benefits for the entire period of service rendered by him both under the Kerala Sports Council as also under the respondent University.

Resultantly, I quash Ext.P7 audit objection and Ext.P11 resolution, and declare that the petitioner is entitled to pension and other pensionary benefits by counting his entire service in the respondent University from 11.12.1985 to 30.06.2013, as also the prior service under the Kerala Sports Council for the period from 21.08.1980 to 10.12.1985, as qualifying service, and by treating him as a teacher who had retired from the respondent University on attaining the age of superannuation of 60 years, with effect from 30.06.2013. The respondents shall compute the pensionary benefits due to the petitioner on the above basis, and disburse the

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balance amounts due to the petitioner by way of pensionary benefits within a period of 4 months from the date of receipt of a copy of this judgment. It is made clear that, if the balance arrears of pensionary benefits are not disbursed to the petitioner within the aforementioned period of four months then, the amount payable to the petitioner shall carry interest at the rate of 9% per annum from the date immediately after the expiry of four months till the date of actual payment.

The writ petition is allowed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/10.08.16