P.S. RAMAMOHANA RAO

*v.*

A.P. AGRICULTURAL UNIVERSITY AND ANR.

JULY 31, 1997

[SUJATA V. MANOHAR AND M. JAGANNADHA RAO, JJ.]

*Service Matter—Andhra Pradesh Act 24 of 1963—Teacher—Superannuation age—College where petitioner worked was transferred to the A.P. University as per S.43 of the Act—Petitioner who was a physical Director is also a teacher within the meaning of S.2(n)—Hence under Regulations 3 & 33 his age of Superannuation is 60 and not 58.*

**The appellant filed a writ petition challenging the order retiring him at the age of 58 contending that he was a 'teacher' within the meaning of S.2(n) of the Act and as per the Regulations governing the service conditions, he was entitled to work till 60 years of age. The High Court dismissed the Petition holding that Physical Director does not fall under the definition of teacher in S.2 (n); that though paid the same scales of pay applicable to teaching staff, it does not give him the status of a teacher; and there is no discrimination in retiring him at 58. On appeal, the appellant reiterated his contentions to which the respondents contended that there was no regular curriculum or syllabus nor credits for physical education and therefore the post was not that of a 'teacher'.**

**Allowing the appeal, this Court**

**HELD : 1. The definition does not say what the word 'teacher' means but includes certain categories within the meaning of the said word. neither the Act nor the rules & regulations specify the duties and functions of a Physical Director. From the affidavit, it is clear that a Physical Director has multifarious duties. He not only arranges game 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 accompanys 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**

A 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, 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
B and outdoor games in which the students have to be trained. Therefore, he has to teach the several skill and techniques of these games apart from the rules applicable to these games. Having regard to the above-stated, the Court is clearly of the view that the appellant comes within the definition of teacher in sub-clause (n) of Section 2 of the Act. Regulation 33 (as amended on 27.4.1976) of the Regulations deals with the presumption of
C the age of superannuation . It is clear that the age of retirement of 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. It is declared that appellant was
D entitled to continue in service till he completed 60 years of age.

[206-G-H; 207-A-C; 206-B-C; 210-D]

2. The Secretary to the University Grants Commission in a letter dated 7.1.1959 addressed to the Registrar, Agricultural University in con-
E nection with upgrading the scale of Physical Directors referred to the minimum qualifications required for an appointment of a physical Director and in the said letter described physical Directors as 'teachers'. In fact, it is clear that while counting the percentages of teachers, Physical Directors have also been counted. There is a memorandum of the Joint
F Registrar of the said University dated 29.7.1966 which clearly admitted that Physical Director comes within the category of teachers. In connection with the Physical Directors working in Degree colleges and Junior colleges the Education department of the Andhra Pradesh Government has issued proceedings dated 29.11.1976 and in the said proceedings Physical directors have been described as teachers, for the purpose of application of the
G Andhra Pradesh Subordinate Service. In regard to the pay scales of Physical Directors in Degree colleges in the State, the Government of Andhra Pradesh had issued proceedings dated 20.4.1987 designation physical Education Directors as Lecturers in Physical Education. The above said communications of the University Grants Commission and of
H the Joint Registrar of the respondent University and of the state Government support this view. [207-D-E; 208-D-H; 209-A]

**3. It may be that Physical Director gives his guidance or teaching to the students only in the evening 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, among 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 clearly within the main part of the definition of 'teacher'. [210-B-C]**

**4. The High Court did not go into the meaning of the word 'teacher' in the main part of the clause nor assess correctly the effect of the material evidence on record. Physical Directors come within the main part of the definition of teacher, and it is not necessary that they should be separately recognised as teachers by an order or statute of the University. [209-D-F]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 898 of 1992

From the Judgment and Order dated 28.4.89 of the Andhra Pradesh High Court in W.P. No. 12751 of 1988.

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

T.V.S.N. Chari for the Respondents.

The Judgment of the Court was delivered by

**M. JAGANNADHA RAO, J.** This appeal has been preferred against the judgment of the Andhra Pradesh High Court in writ Petition No. 12751 of 1988 dated 28.4.1989 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 A.P. Agricultural University as a Director of Physical Education till he completed 60 years or whether he was liable to superannuate after completion of 58 years?

The brief facts of the case are as follows :

The appellant was initially employed as Physical Director in the Bapatla Agricultural College which is a Government college, w.e.f. 4th August, 1956. The Andhra Pradesh Agricultural University was formed

A under Andhra Pradesh Act 24 of 1963 (hereinafter called the act') and the abovesaid college stood transferred to the said University by virtue of Section 43 of the said Act w.e.f. 4th May, 1964. The services of the appellant, therefore, stood transferred to the Agricultural University accordingly and the appellant continued to work as Physical Director in the
B 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 sometime 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
C superannuation for Physical Directors in the University is 58 years. He contends that he is entitled to continued 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 for the period
D after the vacation of the stay and before the completion of 60 years also for the purpose of computing his retiral benefits.

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 came within the main part of the definition of teacher
E 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 then those included within the inclusionary part of the section, and who come within the main part of the definition. Learned counsel also referred us to
F Regulations 3 & 33 of the Regulations dated 9.12.1965 prescribed in regard to the conditions of service of teachers and other employees of the university. Counsel also relied upon a letter of the Joint Registrar of the University dated 29.7.1976 and the proceedings of the Education department of the State government dated 29.11.1976 and 20.4.1987 to contend that physical Director was treated as a 'teacher and was not therefore outside
G 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
H 58 years which was applicable to certain other categories of employees.

On the other hand, learned counsel for the university contended that Physical Director was not a 'teacher' within the meaning of 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 curriculumn or syllabus for physical education and merely because he was helping the students in sports and games and for participating in certain competitions, he could not be called a 'teacher'.

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 :

> "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 out includes certain categories within the meaning of the said word.

Regulation 33(as amended on 27.4.1976) of the Regulations deals with the presumption of the age of superannuation and, in so far as it is material, reads as follows :

> "(a) The age of retirement for *teachers* shall be 60 years provided that it shall be competent for the appointing authority 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 paying him three months salary in lieu of such notice.
>
> (b)(i) The age of retirement of the employees other than those mentioned in Clause (a) and Class IV employees shall be 58 years provided that the appointing authority may retire an employee from service in public interest, after giving him at least three month's notice or at least three month's salary in lieu of such notice at any time after completing twenty five years of qualifying service or attaining fifty years of age.

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

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From the above Regulation, it is clear that the age of retirement for 'teachers' is 60 yeas 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 C 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.

Neither the Act nor the rules & regulations specify the duties and functions of a Physical Director. We have, therefore, to go to by the D 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 the duties of the Physical Directors in this E 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.

F (c) to arrange Inter-class and Inter-Collegiate tournaments.

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

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

G 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 out also arranges inter-class and inter-college tournaments and accompanies the students team when they go for the H 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 pay the games and practices and unless the students are guided about the said rules 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.

Having regard to the above-said material before us, we are clearly of the view that the appellant comes within the definition of a teacher in sub-clause (n) of section 2 of the Act.

We may also here refer to certain proceedings relied upon by the learned counsel for the appellant. The Secretary to the university Grants Commission in a letter dated 7.1.1959 addressed to the Registrar of the Agricultural University in connection with the upgrading of the scales of Physical Directors referred to the minimum qualifications 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 teachers of Physical Education in Universities and Colleges and decided as follows :
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> The minimum qualifications for appointment as a Director of Physical Education or a Physical Instructor in Universities and colleges should be a Post-Graduated Diploma (or certificate) of Degree in Physical Education. Persons with much qualifications may be appointed in the same scale of the universities may be appointed in the scale of pay of Readers if the Universities so desire. Persons with lower qualifications may be appointed on the same terms as Tutors and Demonstrators. These teacher of Physical education may be included among the teaching staff of College and Universities for purpose of revision of salary scales.

A 2. I am to request you to furnish the information in respect of the existing Physical Instructors in the Universities and Colleges in the enclosed proformas, with a commitment to share the increased cost at 20% in the case of University teachers and 50%, 25% in the case of College Teachers consequent upon the fixation of their B salaries in the revised grades. If the scheme of upgrading the salary males of teachers of physical Education as detailed above, is acceptable to the University/college, the date of the implementation of the scheme will be the same as for the other teachers viz. 1.4.1956 in the case of Universities teachers and 1.4.1957 in respect C of College teachers."

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

D There is memorandum of the Joint Registrar of the said university dated 29.7.1966 dealing with the case of one M. Hanumanth Rao, Physical Director in connection with his retirement, it is clearly admitted that Physical Director comes within the category of teachers. The relevant part of the said letter reads as follows :

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"With reference to his letter cited, the Principal Agricultural College, Bapatla is informed that the Physical Directors working in the Colleges under Andhra Pradesh Agricultural University come under the category of teaching staff and that the age of retirement F for such employees has been prescribed in the Andhra Pradesh Agricultural University (conditions of Service) Regulations, 1965."

In connection with the Physical Directors working in Degree colleges and Junior colleges the Education department of the Andhra Pradesh Government has issued proceedings dated 29.11.1976 and in the said G proceedings Physical Directors have been described as teachers, for the purpose of the application of the Andhra Pradesh General Subordinate Service. In regard to the pay scales of Physical Directors in Degree Colleges in the State, the Government of Andhra Pradesh had issued proceedings dated 20.4.1987 designating Physical Education Directors as H Lecturers in Physical Education.

We are of the view that the above said communications of the University Grants Commission and of the Joint Registrar of the respondent University and of the State Government support the view have taken above. A

In the impugned judgment of the High Court has been said that merely because Physical Directors are paid the same scales of the teaching staff that does not confer on them the status of a teacher. There is also no discrimination if Physical Directors are retired at the age of 58 years and another teachers are allowed to retire at the age of 60 years. The High Court further said that while it was true that section 2(n) of the Act contained an inclusive definition of 'teacher', the Physical Director did not come within the categories mentioned in the inclusive definition. They are neither professors nor readers nor lecturers nor were they persons appointed or recognised by the university for the purpose of imparting instruction or conducting and guiding research or extension programmes. B C

In our view, the learned Judges did not go into the meaning of the word "teacher" in the main part of the clause nor assess correctly the effect of the material evidence on record. The learned Judges observed that assuming Physical Directors imparted instructions to his 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 status of the University. D E F

In the additional affidavit of the university, referred to earlier, it is no doubt contended that a semester course in the University means a unit of instruction and devotes a segment of subject matter to be covered in a semester. Under such a system a person has to get a specific number of credits. A credit hour "means one hour lecture or two to three hours of a laboratory or field work" in practicals. It is contended that the student undergoes a course of study leading to various under-graduate programmes in the University and has to pass course and complete the minimum number of credit hours prescribed therefor from time to time. So far the games and sports are concerned, it is contended, that there is no weightage of credit hours and there are also no theoretical and practical courses G H

A prescribed for the students. It is contended that for the said reasons Physical Directors cannot be treated as teachers.

We are unable to agree. It may be that the Physical Director gives his guidance or teaching to the students only in the evening after the regular classes are over. It mayalso be that the University has not
B prescribed in writing any theoritical and practical classes for the students so far as physical education is concerned. But as pointed by us earlier, among 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 clearly within the main part of the
C definition as a teacher'. We, therefore, do not accept the contention raised in the additional counter affidavit of the University.

For the aforesaid reasons the appeal is allowed and judgment of the High Court is set aside and it is declared that appellant was entitled to continue in service till he completed 60 years of age. Now that he has
D retired he is entitled to the emoluments payable to him for the remaining period of the service upto 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. The appeal is
E allowed and disposed of accordingly.

I.M.A. Appeal allowed.