

Kerala High Court

Against The Judgment In Wp(C) ... vs Assistant Librarians Are ... on 15 February, 2016

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC  
&  
THE HONOURABLE MRS. JUSTICE SHIRCY V.

MONDAY, THE 7TH DAY OF NOVEMBER 2016/16TH KARTHIKA, 1938

WA.No. 1283 of 2016 ( ) IN WP(C).33767/2014  
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AGAINST THE JUDGMENT IN WP(C) 33767/2014 DATED 15.2.2016 of HIGH COURT OF KERALA

APPELLANTS/PETITIONERS IN LEAVE PETITION:  
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1. HARIKUMAR S.  
S/O. SUKUMARAN NAIR, ASSISTANT LIBRARIAN-GR.I,  
KERALA UNIVERSITY LIBRARY NANDANAM,  
CRA-A27, AYODHYA NAGAR, SREEKARYAM P.O.,  
THIRUVANANTHAPURAM-695 017.
2. MAYA M.R.  
D/O. RAMACHANDRAN PILLAI , ASSISTANT LIBRARIAN-GR I  
KERALA UNIVERSITY LIBRARY,MEENAKSHI MANDIRAM TC 17/703 (1),  
POOJAPURA, THIRUVANANTHAPURAM-695 012.
3. VIMALA MICHAEL  
D/O. T.S. MICHAEL, ASSISTANT LIBRARIAN-GR.II,  
KERALA UNIVERSITY LIBRARY,PUTHENKANDATHIL BETHEL,  
MADANKOVIL LANE, MUTTADA P.O., THIRUVANANTHAPURAM.

BYADVS.DR.K.P.PRADEEP  
SRI.SANAND RAMAKRISHNAN  
SRI.T.T.BIJU  
SMT.T.THASMI

RESPONDENTS/RESPONDENTS & WRIT PETITIONERS:  
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1. STATE OF KERALA  
REPRESENTED BY THE CHIEF SECRETARY SECRETARIAT,  
THIRUVANANTHAPURAM-695001.

2. THE REGISTRAR,  
UNIVERSITY OF KERALA  
THIRUVANANTHAPURAM.
3. THE PRINCIPAL SECRETARY (FINANCE)  
EDUCATION (C) DEPARTMENT, SECRETARIAT  
THIRUVANANTHAPURAM.

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4. THE SECRETARY,  
UNIVERSITY GRANTS COMMISSION,  
BAHADU SHAR ZAFAR, MARG, NEW DELHI-110002.
5. THE ADDITIONAL CHEIF SECRETARY,  
DEPARTMENT OF HIGHER EDUCATION,  
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
6. DR. MOHANAKUMAR  
MLI SC, PHD, AGED 57 YEARS, S/O. THANKAPPAN, ASSISTANT  
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KERALA UNIVERSITY LIBRARY,  
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R/A QUARTERS, NO C-23, KERALA UNIVERSITY CAMPUS  
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7. DR. BEENA S.  
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KERALA UNIVERSITY LIBRARY.  
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MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM-695011.
8. DR. AJIKUMARI T.  
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D/O. THANKAPPAN, ASSISTANT LIBRARIAN (UGC),  
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9. DR. B. ASHA,  
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D/O. SOMASEKHARAN NAIR, ASSISTANT LIBRARIAN(UGC)  
CAMPUS, LIBRARY, UNIVERSITY OF KERALA

THIRUVANANTHAPURAM-695 034,  
RESIDING AT VRINDAVANAM, THRIPPADAPURAM NORTH,  
THIRUVANANTHAPURAM NORTH, KULATHOOR P.O.,  
THIRUVANANTHAPURAM-695583.

10. DR. G. HEMACHANDRAN NAIR,  
AGED 53 YEARS, MLISC., PH.D., S/O. GOPALAKRISHNAN NAIR  
ASSISTANT LIBRARIAN (UGC), DEPARTMENT OF BOTANY,  
UNIVERSITY OF KERALA, THIRUVANANTHAPURAM-695034.  
RESIDING AT SARAYUR, C-66, GANDHIPURAM,  
SREEKARYAM P.O., THIRUVANANTHAPURAM-695 017.

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11. SMT SHEEJA  
B.S, M.SC B.ED, M.LISC, M.PHIL,  
D/O. M.K. BHARAGAVAN, ASSISTANT LIBRARIAN (UGC).  
KERALA UNIVERSITY LIBRARY, PALAYAM,  
THIRUVANANTHAPURAM-695 034.,  
RESIDING AT NALINI NIVAS, TC 2/2344, TPJ NAGAR 57A,  
PATTOM P.O., THIRUVANANTHAPURAM-695 004.
12. DR. P.K. SURESHKUMAR,  
AGED 48 YEARS, M.SC., M.PHIL, B.ED, M.LISC, PH.D,  
S/O. N. KOCHAPPAN PILLAI, ASSISTANT LIBRARIAN (UGC)  
KERALA UNIVERSITY LIBRARY, PALAYAM,  
THIRUVANANTHAPURAM-695034.  
RESIDING AT TC 7/660(13), SWASTHY, RVRA-J3  
KANKIRAPARA P.O., THIRUVANANTHAPURAM-695030.
13. DR. JALAKAKUMARI C.  
M.LISC, PH.D, D/O. K. BHASKARAN,  
ASSISTANT LIBRARIAN (UGC)  
KERALA UNIVERSITY STUDY CENTRE  
SN COLLEGE CAMPUS, KOLLAM-1,  
RESIDING AT KOPPARA, KOLIKOLLOOR P.O.,  
KOLLAM.

R6,R 9,R 10 & 12 BYADV.SRI.N.N.SUGUNAPALAN (SR.)  
R6,R 9,R 10 & 12 BYADV.SRI.S.SUJIN  
R2 BYADV.SRI.THOMAS ABRAHAM, SC, UNIVERSITY OF KERALA  
R6,R9,R10 & 12 BYADV. ADV.SRI.NAVNEETH ( NO MEMO)  
R7,R8,R 13 BY ADV. SRI.MILLU DANDAPANI

R BY SRI.S.KRISHNAMOORTHY, CGC  
R BY GOVERNMENT PLEADER SRI . PAULABRAHAM VAKKANAL  
R BY SRI.P.P.JNANASEKHARAN  
R BY SRI.PAUL JACOB, SC, UNIVERSITY OF KERALA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 07-11-2016, ALONG  
WITH WA. 1443/2016 AND CONNECTED CASES, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS ANNEXURES

ANNEXURE A1	COPY OF THE ORDER G.0(P)NO.Ad.Av.2/53464 DTED 6.6.2016 ISSUED BY THE 2ND RESPONDENT
ANNEXURE A2	COPY OF THE ORDER G.0(P)No.79/90/H.Edn.DATED 27-3-1990 WITH ANNEXURE
ANNEXURE A3	COPY OF the ORDER G.0(M.S)NO.87/91/H.Edn.DATED 9.4.1991
ANNEXURE A4	COPY OF THE ORDER G.0(Rt)NO.1797/2012/H.Edn. DATED 2-8-2012 ISSUED BY THE GOVERNMENT OF KERALA
ANNEXURE A5	COPY OF THE COMMUNICATION D.O.NO.F.10-6-2011 (PS) MISC.DATED 6-7-2015 ISSUED BY the FOURTH RESPONDENT.

RESPONDENTS ANNEXURES

NIL

TRUE COPY

P.A TO JUDGE

SMM

ANTONY DOMINIC & SHIRCY.V,JJ

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& 1541 of 2016

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Dated this the 7th day of November, 2016

#### JUDGMENT

Antony Dominic,J Assistant Librarians Grade-I, in the service of the Kerala University, filed Writ Petition No.33767 of 2014 with the prayer, mainly, to declare that they are entitled to get their age of superannuation enhanced to 62 years and to direct the State and the University to enhance their retirement age to 62, as prescribed by the University Grants Commission. By the judgment under appeal, the learned single Judge upheld the entitlement of the petitioners to have their age of retirement enhanced to 60 years. Consequential directions were also issued. This was having regard to the nature of duties discharged by the writ petitioners, which, according to the learned Judge entitled the Assistant Librarians Grade-I to W.A.Nos.1283, 1277, 1443 be treated as teachers of the University entitling them for parity with teachers of the University in the matter of age of retirement.

2. These appeals are filed by the party respondents in the writ petition, University of Kerala, the State and third parties. All the appellants contend that the Assistant Librarians Gr.I are not entitled to be treated as teachers of the University as defined in the Kerala University Act to claim entitlement for parity with teachers in the matter of age of retirement. It is also contended that age of retirement is not governed by the Regulations of the University Grants Commission and that fixation of age of retirement of teachers and non teaching staff of the University is a matter entirely within the policy making power of the State Government. It is stated that in so far as teaching staff are concerned, provision has been made in Statute 10 of Chapter III of Kerala University First Statutes, 1997, wherein the age of retirement has been fixed as 60 years. It is also pointed out that non teaching W.A.Nos.1283, 1277, 1443 staff of the University are governed by the provisions of the KSR, KS&SSR and Government Servants Conduct Rules 1960 and that, the age of retirement fixed is 56 years. Therefore, according to the appellants, the learned single Judge erred in extending the age of retirement of teaching staff to Assistant Librarians Gr.I and allowing the writ petition.

3. On the other hand placing reliance on Exts.P1 to P13 and Ext.P31 series, it was contended on behalf of the writ petitioners that in terms of UGC Regulations, the writ petitioners were entitled to continue in service till 62 years. According to Counsel, in the light of the principles laid down by the Apex Court in Kalyani Mathivanan vs. K.V.Jeyaraj and Others [2015 (6) SCC 363], once UGC Regulations are adopted by the State, even if there is conflict between the UGC Regulations and the State enactments governing the Universities, UGC Regulations would prevail. According to him, since UGC Regulations of 2010 were adopted by the State Government, writ W.A.Nos.1283, 1277, 1443 petitioners are entitled to continue in service till 65 years specified therein, despite the provisions contained in the University Act and the Statutes. He also contended that having regard to the nature of duties discharged by the Assistant Librarians, as certified by the University in Exts.P1 to P3 and disclosed in Ext.P31 series, the Assistant Librarians are entitled to be treated as teachers

of the University. On this basis, the learned counsel contended that the learned single Judge was perfectly justified in upholding the entitlement of the respondents for parity with teachers of the University.

4. We have considered the submissions made.

5. In our view, two questions arise for consideration in these appeals. The first question is whether the writ petitioners are entitled to claim the benefit of the age of superannuation as prescribed by the UGC in its Regulations and the second question would be whether the writ petitioners are "teachers of the University" as defined in the Kerala University Act.

W.A.Nos.1283, 1277, 1443

6. In so far as the first question, whether the writ petitioners are entitled to the benefit of the age of superannuation as prescribed by the UGC in its Regulations is concerned, this claim was sought to be substantiated mainly by relying on Exts.P8 and P10. Ext.P8 is the communication issued by the UGC on 9.10.2006, advising the Registrars of all Universities including deemed Universities that it has been decided that the age of superannuation of Assistant Librarians/College Librarians would henceforth be 62 years. Ext.P13 is the UGC Regulations on Minimum Qualifications for appointment of Teachers and other Academic Staffs in Universities and Colleges and measures for the maintenance of standards in Higher Education, 2010 (hereinafter referred to as UGC regulations 2010). In UGC Regulations 2010, Counsel referred us to clause 8(f) dealing with age of superannuation, in which it is provided that since there is no shortage in the categories of Librarians, increase in W.A.Nos.1283, 1277, 1443 the age of superannuation from the present 62 years shall not be available to the categories of Librarians. It was stated that the Government of Kerala adopted the UGC Regulations 2010 by its order dated 10.12.2010 with effect from 18.9.2010 and that the Academic Council of the University considered and approved the Regulations for implementation in the University in its meeting held on 23.11.2013 and that the same was notified on 11.3.2014 and published in the Kerala Gazette on 8.7.2014.

7. Further, according to Counsel, in the judgment of the Apex Court in Kalyani Mathivanan vs. K.V.Jeyaraj and Others [2015 6 SCC 363], it was held that the UGC Regulations passed by both Houses of Parliament, though a sub-ordinate legislation has binding effect on the University to which it applied and that to the extent the State Legislation is in conflict with the Central Legislation, including sub-ordinate legislation made under the Central Legislation under Entry 25 of the Concurrent List, the W.A.Nos.1283, 1277, 1443 State Legislation shall be repugnant to the Central Legislation and would be inoperative. (See the judgment in -Kalyani Mathivanan supra)

8. To find out the tenability of this contention, it is necessary to refer to the stand adopted by the University of Kerala and UGC. As far as the University of Kerala is concerned, it has filed a counter affidavit, and in paragraph 9 to 11, its stand has been made clear thus;

"9. It is submitted that the petitioners are employed in non-teaching posts, although they may be academic in nature. As per Statute 2 Chapter 4 of the Kerala University

First Statutes 1977, in case of non teaching staff of the University, they are "subject to the provision of the Act and Statutes the KSSR & KSR and Government Servants Conduct Rules 1960 as amended from time to time in so far as may be applicable and to the extent expressly provided in these Statutes shall apply in the matter of all service conditions of the University employees in the University Service". Now the retirement age of non-teaching staff as per the KSR is 56 years. Hence, unless the Government amends KSR it is not possible to extend the retirement age of librarians.

10. In view of the above facts it is humbly stated that W.A.Nos.1283, 1277, 1443 the writ petition is misdirected as to the law applicable as relating to the petitioners and the service conditions. Ext.P8, would be applicable only to direct appointees under the UGC Regulations and hence has no implication on the petitioners whatsoever. Ext.P9 judgment does not pronounce any law in favour of the petitioners. In fact, in that writ petition, Hon'ble Court only remanded the matter to the University for fresh decision. Further, the issue relates to Kerala Agricultural University which is established under a separate Act, separate rules and separate regulations and statutes and hence will not be applicable in the case of this respondent University.

11. It is humbly submitted that the matter of retirement age of non teaching staff is a matter of policy of the government and the matter of administrative policy of this respondent University. Payments to officers of this respondent University is made only after concurrence from the Government. Hence, unless the 1st respondent changes its policy and consequently its employment rules as in the KSR, it is impermissible to raise the retirement age of the petitioners to 62 as sought for in the writ petition."

9. The UGC has also filed an affidavit and in paragraph 4, it has stated this " 4. It is submitted that the Petitioners are working W.A.Nos.1283, 1277, 1443 as Librarians in University of Kerala. The case relates to the age of superannuation. In this connection, it is submitted that the Central Government has decided to de-link the condition of enhancement of age of superannuation from the payment of centre share of 80% arrears to States. Since the question of enhancement of age of retirement is exclusively within the domain of policy making power of State Governments, the issue of age of retirement has been left to the State Government to decide at their level. A copy of the Ministry of Human Resource Development letter NO.F1.7/2010-U.II dated 14.8.2012 is produced herewith and marked as Exhibit R4(a). It is submitted that the question is squarely covered by the decision reported in 2011(2) KLT 468."

10. It is also relevant in this context that in paragraph 4 of its counter affidavit, the commission has referred and relied on the order dated 17.8.2012 issued by the Ministry of Human Resources Development, Department of Higher Education, Government of India in which the Government of India also stated interalia thus.

"4. After taking into consideration the views expressed by several State Education Ministers during the conference held in 2010 the Central Government has now decided to de-link the condition of enhancement of W.A.Nos.1283, 1277, 1443 age of superannuation from the payment of Central share of 80% arrears to the States.

5. Bearing in mind that the question of enhancement of age of retirement is exclusively within the domain of the policy making power of the State Governments, the issue of age of retirement has been left to the State Governments to decide at their level. The condition of enhancement of age of superannuation to 65 years as mentioned in this Ministry's letter dated 31.12.2008 , may be treated as withdrawn, for the purpose of seeking reimbursement of central share of arrears to be paid to State University and College teachers. However, the others conditions as mentioned in the letters cited above shall continue to apply."

11. Ext.R4(a) letter issued by the Government of India, is a direction issued by the Central Government in exercises of its powers under Section 20 of the University Grants Commission Act, 1956 which provides that in the discharge of its functions under the Act, the Commission shall be guided by such directions, questions of policies relating to national purposes as may be given to it by the Central government. Thus, in view of the binding nature of Ext.R4(a), stand of the UGC is clear that age of W.A.Nos.1283, 1277, 1443 retirement is a matter left to the policy decision of the State Government and is not a part of the Regulations of UGC. In this context it is relevant to note that in the judgment of this Court in Mathai vs. Elizabeth Xavier [2011 (2)KLT 468], this Court has recognised the entitlement of the State Government to fix the age of retirement of teaching and non teaching staff of the Universities in Kerala. In Mathai's case (supra) rejecting the claim of teachers for enhancement of their retirement age on the basis of UGC Regulations, this court held thus

4. In the first place, what we notice is the U.G.C. Regulations dated 30.6.2010 which is the sole basis of petitioners' claim, is issued under clauses (e) and (g) of sub-s.(1) of S.26 of the University Grants Commission Act, 1956. The said provisions are extracted hereunder for easy reference:

"S.26. Power to make regulations:- (1) The Commission may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder:- .....

(e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University having regard to the branch of education in which he is expected W.A.Nos.1283, 1277, 1443 to give instructions;

(g) regulating the maintenance of standards and the co- ordination of work or facilities in Universities. We do not find anything in the above provisions authorising U.G.C. to make regulations in regard to service conditions of teaching staff in the Universities including retirement age. On the other hand, U.G.C. is authorised to prescribe the qualification required for teaching staff in Universities in the subjects concerned and they are free to make regulations for maintenance of standards of education or co-ordination of work or facilities in Universities. The U.G.C. Act is one made by the Parliament in exercise of powers vested in it under Entry 66 of List I of the VIIth Schedule to the Constitution of India, which authorises Parliament to make law on "co- ordination and determination of standards in institutions for higher education or research and scientific and technical institutions". Even if the above Entry includes authority on Parliament to fix retirement age uniformly for all colleges affiliated to Universities in India, Parliament has not made any law for the country as a whole and the same is admitted even by the petitioners. Petitioners have furnished



statistics to us with regard to retirement age of teaching staff in colleges and Universities in various States in India. On going through the same we notice that Kerala is the only State where the retirement age is kept as low as 55. The retirement age in other States vary from 58 to 65 and atleast in few States the age of W.A.Nos.1283, 1277, 1443 retirement is 60. Even in Kerala while the retirement age of teaching staff in colleges affiliated to Universities is 55, the retirement age of teaching staff directly employed by Universities in their Departments is 60. The contention raised by the petitioners that after the U.G.C. Regulation above referred issued on 30.6.2010 the retirement age of teaching staff of colleges affiliated to Universities all over India would stand increased or will have to be increased by the concerned State Governments to the uniform level of 65 years does not find acceptance in any other State, though some of the States had already increased the retirement age to 65 even before the aboveresferred U.G.C. Regulation came into force, but of their own. Probably some of the States may be following the U.G.C. Regulations and may increase retirement age consistent with the same. However, Government Pleader pointed out that conditions in Kerala are unique where large number of unemployed highly educated youth are waiting for employment and all those people could be accommodated in vacancies arising on account of retirement of teaching staff of colleges. Therefore, the Government as of now is strongly against increasing retirement age. Admittedly education is in the concurrent list under Entry 25 which states as follows:

"Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour." Obviously except for the entries referred to above in List W.A.Nos.1283, 1277, 1443 I, the State is within its capacity to make legislation in regard to all matters pertaining to education including service conditions of teaching staff in colleges affiliated to Universities. So long as there is no Central legislation repugnant to the State legislation on retirement age which is covered by University statutes and service conditions of State Government employees made applicable by incorporating specific provisions to the University statutes, there is no repugnance between the State law and Central law on service conditions and retirement age of teaching faculty members of the colleges as alleged by the petitioners. We, therefore, do not find any violation of Art.245(1) of the Constitution in the State Government refusing to increase the retirement age of college teachers in line with U.G.C. Regulations of 30.6.2010 or the Government of India's letter annexed thereto. We have already found that the U.G.C. does not enjoy any power under the Act to prescribe age of retirement of teaching staff in colleges affiliated to Universities. Their role is only to prescribe academic standards, qualifications required for the teaching staff, facilities required in higher education institutions etc. and whatever else they order beyond what is conferred on them under statute are only recommendatory in nature. Standing Counsel for the University Grants Commission does not canvass the position that the U.G.C. has the authority to prescribe uniform retirement age for teaching staff of colleges affiliated to Universities. Counsel for the petitioners relied on Clause 8 of Government of India W.A.Nos.1283, 1277, 1443 letter dated 11.5.2010 (produced as Ext.P3 in W.P.(C) No.8011/2011) which forms part of U.G.C. Regulations of 30.6.2010 wherein it is stated as under:

"Release of the Central assistance shall be considered by this Ministry in accordance with the provisions of the Scheme only after the State Government have adopted and implemented the

scheme as a composite scheme, including adoption of the age of superannuation for those engaged in 'inclass' teaching; and have disbursed the salary based on revised pay scales, and after scrutiny of the detailed proposal as may be received from the State Government."

We have already noticed that even when Central assistance is conditional, it is for the State Government to decide as a matter of policy which is best for the State i.e. whether to adopt the recommendation as a package in full and complete or to take the consequence for non-compliance with part of the recommendations. This is within the realm of the Government policy and it is not for this court to recommend to the Government which course it should adopt. Regulation of the U.G.C. and package of incentives by the Central Government are only recommendatory or advisory in nature. It is not within our powers to direct the State Government to increase the retirement age in line with the recommendation of the U.G.C. to 65. We also notice that what persuaded the U.G.C. to make recommendation to enhance the retirement age of members of teaching faculty is acute shortage of qualified hands in different parts of the W.A.Nos.1283, 1277, 1443 country. However, the scenario in Kerala is different and the State is confident of replacement of retiring hands with eligible people in the waiting. In fact, when the Government felt shortage of teachers in Medical Colleges, they enhanced the retirement age of teaching faculty members in Medical Colleges in Kerala to 60. Even though petitioners have relied on several reported decisions of the Supreme Court and various High Courts on general principles and binding nature of Central legislation on States, in view of the direct decision of the Supreme Court referred above, we do not think there is any need for us to consider those decisions. We, therefore, do not find any merit in the claim made by the petitioners. From the above discussion and the principle laid down in Mathai's case (supra), it is obvious that the age of retirement of teaching and non teaching staff is a matter which is totally outside the purview of the UGC Regulations and is entirely within the domain of the State Government. That policy of the State Government is reflected in Statute 2 of Chapter IV of the Kerala University Statutes, 1977 which provides that in the case of non teaching staff of the University, they are subject to the provisions of the University Act, the Statutes, the KSR W.A.Nos.1283, 1277, 1443 and KS&SSR and the Government Servants Conduct Rules as amended from time to time. It is also an undisputed fact that the retirement age prescribed in the Kerala Service Rules is 56 years and in spite of demand from various quarters, the State Government have not heeded to such demands and enhanced the age of retirement by amending the KSR so far. Therefore, the writ petitioners cannot claim enhancement of their age of retirement on the basis of the UGC Regulations and instead their retirement age will be governed by the provisions of the KSR, which has been incorporated by reference in Statute 2 of Chapter IV of the Kerala University, 1977. As a result, the first question has to be answered against the writ petitioners.

12. The second question is whether there is any merit in the case of the writ petitioners that they are "teachers of the University" as defined in the Kerala University Act. This contention is raised by relying on Exts.P1 to P5 and P31 series of documents produced in W.A.Nos.1283, 1277, 1443 the writ petition and we shall briefly refer to these documents. Exts.P1 to P3 show that University has recognised some of the Assistant Librarians who are also Ph.d holders as Research Guides. Ext.P4, is a communication of the UGC issued in 1998 stating that the Librarians should be treated as academic and non vocational staffs. Ext.P5 is a certificate issued by the Deputy Registrar of the University, to the effect that the post of Assistant Librarian Grade-II held by Dr.G.Hemachandran

Nair belongs to the category of non teaching academic staff. Writ petitioners further relied on Ext.P31 series, which show that payments have been made to some Assistant Librarians of the University for having attended the meeting of Board of question paper setters/examiners and for conducting practical examination/Viva-Voce for the university examinations mentioned therein.

13. It was contended that the nature of duties discharged by the Assistant Librarians as disclosed from W.A.Nos.1283, 1277, 1443 Exts.P1 to P5 and P31, show that they were imparting instructions, guiding research, were question paper setters and were conducting practical examination/Viva-Voce even. It is stated that irrespective of the noman clature of the post held by them, having regard to the nature of duties discharged, they are entitled to be treated as teachers of the University as defined in the University Act.

14. According to us, the question whether a person is a teacher of the University or not has to be answered with reference to the statutory provisions contained in the Kerala University Act. The term teacher and teacher of the University, have been defined in Sec.2(27) and 2(28) of the University Act reads thus:

Section 2(27):- "Teacher" means a Principal, Professor Associate Professor, Assistant Professor, reader, lecturer instructor, or such other person imparting instructions or supervising research in any of the colleges or recognised institutions and whose appointment has been approved by the University."

Sec. 2(28):- "Teacher of the University" means a W.A.Nos.1283, 1277, 1443 person employed as teacher in any institution maintained by the University"

15. Since the writ petitioners are employed by the University itself what is relevant is Section 2(28). In the context of the claim made by the Director, Centre of Adult, Continuing Education and Extension of Kerala University that he is a teacher of the University, these provisions of the Act were considered by a Division Bench of this Court in the judgment in Gopinathan Pillai P. (Dr.) v. University of Kerala, Tvm and Others [2016 (4) KHC 153]. The Division Bench negated the claim by holding thus:

"6. In so far as the merits of the controversy raised in this writ petition are concerned, as we have already stated, the question is whether an Assistant Director in the CACEE is a 'teacher' of the University, entitled to continuance in service till 60 years. As far as this question is concerned, it is relevant to refer to sections 2(27) and 2(28) of the Kerala University Act which define 'teacher' and 'teacher of the University'. A reading of section 2(27) shows that 'teacher' has been given the meaning as a 'principal, professor, associate professor, assistant professor, reader, lecturer, instructor, or such other person imparting instructions or W.A.Nos.1283, 1277, 1443 supervising research in any of the colleges or recognised institutions and whose appointment has been approved by the University'. Similarly, as per section 2(28), only a person employed as teacher in any of the institutions maintained by the University is a 'teacher of the University'. Statute 10 of Chapter III of the Kerala University First Statutes, 1977 makes the provisions of the Kerala Service Rules, Kerala State & Subordinate Service Rules and the Kerala Government Servants' Conduct Rules applicable

to the teachers of the University. Further, the proviso to Statute 10 prescribes that age of retirement of teachers of the University shall be 60 years.

7. A reading of these provisions would therefore show that a person who has been appointed in any of the categories mentioned in section 2(27) and who is imparting instructions or supervising research in any of the colleges or recognised institutions of the University and whose appointment has been approved by the University alone is a teacher. Similarly, only a person employed as a teacher in any institutions maintained by the University is a teacher of the University as per section 2 (28) of the Act. Such a teacher of the University alone is entitled to the benefit of the proviso to Statute 10 of Chapter III of the Kerala University First Statutes, 1977 and entitled to continuance in service till 60 years.

8. Interpreting the similar provisions contained in the Calicut University Act, in W.A.1099/88, a Division Bench W.A.Nos.1283, 1277, 1443 of this Court has held that an Assistant Director in the Department of Adult Education was not a teacher of the University. This was on the reasoning that to be a teacher of the University what is required is that such person should have been employed by the University to do the work of guiding or supervising research. The relevant part of the judgment reads thus:

"7. The question for consideration is as to whether the recognition by the University of the respondent as a person to guide or supervise Research of Ph.D. Students confers on her status as a teacher as defined in section 2 (27) read with section 2 (28) of the Act. It is clear from these provisions that it is not enough that a particular person is recognised to supervise or guide research. What is of essence of the matter is that the person must have been employed by the University to supervise or guide research. The case put forward by the respondent at the highest is that she has been recognised by the University to guide research students for their Ph.D. Degree. That is precisely the stand taken by the University also. It is nobody's case that the respondent has been employed or appointed to supervise or guide search. What has been done by the University is to give recognition having regard to the attainments of a particular person as having the necessary qualifications to guide or supervise research. When recognition was given to the respondent to guide or supervise students for Ph.D.

Course, what the University did was not to employ the respondent to do supervisory work on research or guide research, but only to accede to her request for such recognition. In other words, it only amounts to granting permission to the respondent to supervise or guide research students. There is a fundamental difference between assigning of particular duties and responsibilities and the granting of permission to a particular person on her own request to do certain thing. When recognition is given by the University to supervise or guide research, it is not in exercise of any right of the W.A.Nos.1283, 1277, 1443 employer to expect the person concerned to do this work of supervising or guiding research as an integral part of the duties and responsibilities attached to that post. The concept of employment is highlighted in the definition of the University teacher given in section 2 (28) of the Act. It is therefore clear that it is not enough that a person is recognised as a

guide or supervisor for research, to give him or her the status of a teacher. What is required is that such a person should have been employed to do such work of guiding or supervising research."

9. This judgment of the Division Bench has been followed by another Division Bench in *Walter Alexander v. University of Kerala* [2011 (1) KLT 963] and rejected the claim of the appellant therein to be a teacher on the basis that the University did not engage him to act as a research guide or to supervise the work of research students.

10. Bearing these principles in mind, we shall examine the case of the petitioner herein. By Ext.P1 order dated 1.2.1990, the University appointed the petitioner as a Project Officer in the CACEE. He continued in service and was later, by Ext.P2 order dated 17.12.2012, promoted as Assistant Director. He attained the age of 56 years, the age of retirement of non-teaching staff, on 20.5.2016 and apprehending that he would be retired from service on 31.5.2016, writ petition was filed with a prayer to direct the respondents to permit him to continue in service till he attains the age of 60 years on 31.5.2020. He also sought a declaration that being the member of teaching staff of the University under section 2(27) of the W.A.Nos.1283, 1277, 1443 Kerala University Act, he has every right to continue in service till he attains 60 years of age.

11. In support of these contentions, the petitioner relied on Ext.P3, a letter issued by the Registrar of the University to the Additional Director of the Ministry of Human Resources Development, Government of India, where it is stated that the CACEE is actively involved in teaching, research, extension and field outreach activities and implement programmes to the need and requirements of the community. It is also stated that they conduct full time regular courses, courses through Institute of Distance Education and Continuing Education courses. Counsel also invited our attention to Exts.P4 and P4(a), which are the annual reports of the University for 2014 and 2013 respectively. These documents show that the petitioner was teaching in the PG, PG Diploma and in certificate courses; that he was the Academic Counsellor for M.A. Sociology, Indira Gandhi National Open University; that he has co-ordinated certificate and Diploma courses and was in additional charge of Director CACEE. It also shows that he has acted as Research Guide and has conducted training programmes, workshops, college level programmes, Dooradarshan programmes and such other programmes of the Centre.

12. Counsel also placed reliance on Ext.P5 report of the sub committee on the UGC pay scale revision and Exts.P6 and P7 orders issued by the University. The W.A.Nos.1283, 1277, 1443 cumulative effect of these three documents are that based on the report and after getting the concurrence of the UGC, the Syndicate at its meeting held on 1.9.1987 decided that the post of Director, Assistant Director and Project Officer be placed in the scales of pay of Professor, Reader and Lecturer of the University respectively and that this decision has been given effect by Ext.P7. Ext.P8 is a certificate issued by the Director of the CACEE, which also certifies that during his service, the petitioner has been associated himself in teaching, research, training, evaluation, publication, extension and field out reach activities of the centre and that he is the co-ordinator of the PG Diploma in Educational Planning, Management and Administration. Our attention was also invited to Exts.P14 and P18 produced by the petitioner along with I.A.6531/16. Ext.P14 is another certificate issued by the Director of the CACEE, which also says that the petitioner was teaching in

Masters Degree/Post Graduate Diploma/Diploma in PG Certificate courses.

13. Ext.P14(b) is another certificate which states that the petitioner has been associated with teaching research, extension, publication and other activities of the centre and that as a faculty member for Diploma in Non-Formal Education, he was engaged in teaching and guiding research students. Ext.P15 is the time table for Personal Contact Programme and Ext.P15(a) shows that some of the sessions were engaged by the petitioner himself. Ext.P15(b) is the proceedings of the CACEE, informing the W.A.Nos.1283, 1277, 1443 petitioner that he has been identified as the Supervising Teacher to guide the students of Master of Human Resources Management in the preparation of their project work. Ext.P16 and Ext.P16(b) are the proceedings of the University whereby registration has been granted for research leading to Ph.D degree in Sociology to the students mentioned therein, with the petitioner as their Guide. Ext.P17 is the scheme and syllabus of PG Diploma in Educational Planning, Management and Administration which has been edited by the petitioner.

14. According to the petitioner, the aforesaid documents would show that he has been actively engaged in teaching students and guiding the research students and that therefore, he is a teacher of the University entitled to the benefit of the proviso to Statute 10 of Chapter III of the Kerala University first Statutes, 1977.

15. In support of this contention, learned senior counsel appearing for the petitioner also placed reliance on Exts.P10, P11 and P12 judgments of this Court in W.A.180/92, W.P(C).3141/04 and W.P(C).25669/04 respectively. He also referred us to the judgment of this Court in Sivasankara Kaimal v. University of Calicut [2003 (1) KLT 146].

16. Reading of the judgment in W.A.180/92 show that in that case, the University did not have plea in the counter affidavit that the appellant therein was not W.A.Nos.1283, 1277, 1443 holding a teaching post. On the other hand, the appellant had asserted in his pleadings that he was holding a teaching post and that he was entitled to continue in service till he attained 60 years. This Court has also taken note of the factual materials that were available to indicate that the appellant therein was in fact engaged in teaching. On the above facts and referring to the judgment of the Apex Court in P.S.Ramamohana Rao V. A.P.Agricultural University (AIR 1997 SC 3433) and also taking into account the fact that on the strength of the interim order passed by this Court the appellant had continued in service till he attained 60 years, the appeal was disposed of declaring that service till the age of 60 years shall be reckoned for terminal benefits.

17. In so far as W.P(C).3141/04, a copy of which has been produced as Ext.P11 is concerned, the petitioner therein was the Director of the CACEE and his claim was that he should be allowed to continue up to the age of 60 years as per the UGC norms. The judgment shows that it was rendered merely following the judgment in W.A.180/92, and taking the view that there was absolutely no reason to hold that the petitioner therein should not also be treated at par with his predecessor in the post. Accordingly, he was allowed to continue till the age of 60 years.

18. Ext.P12 judgment in W.P(C).25669/04 is the case of an Assistant Director in the CACEE and his claim W.A.Nos.1283, 1277, 1443 also was to continue in service until he attained 60 years of age. The writ petition was allowed and it was declared that he was a teacher of the University and entitled to continue in service up to the age of 60 years.

19. According to us, while considering the question whether a person is a 'teacher' of the University, the issue to be examined is whether he is a 'teacher of the University' as defined in section 2(28) of the Kerala University Act. As we have already stated, to be a teacher of the University, a person must be employed as teacher in any of the institutions maintained by the University. We do not find that the question whether the claimants, whose cases were considered by this Court in Exts.P10, P11 and P12, were 'teachers of the University' as defined in section 2(28) has been pointedly framed or considered. Therefore, we are not persuaded to place reliance on these judgments and hold that the petitioner herein is also a teacher of the University.

20. On the other hand, according to us, in so far as this case is concerned, admittedly, the petitioner has been appointed as a Project Officer in CACEE, who was later promoted as Assistant Director. Although he is certified to have been engaged in teaching and guiding research students, there is nothing to show that the petitioner is a person who has been employed by the University as a teacher in the CACEE, an institution maintained by the University, to be a 'teacher of the University' as defined in W.A.Nos.1283, 1277, 1443 section 2(28) of the Act. When the petitioner is not a teacher of the University, he cannot claim the benefit of the proviso to Statute 10 of Chapter III of the Kerala University First Statutes, 1977 and continue in service till 60 years."

A reading of the statutory provisions and the judgment in the case of Gopinathan Pillai (supra) show that to be teacher of the University, a person should be employed by the University as teacher in any of its institution. Therefore, even if a person who is employed by the University for other purposes has incidentally imparted instructions or guided research students that would not qualify him to be a teacher of the University.

16. In so far as these cases are concerned, the writ petitioners do not have even a claim that they are employed by the University to teach students. In such a situation, having regard to the provisions of the Kerala University Act and in the light of the judgment of this Court in Gopinathan Pillai's case (supra), we cannot W.A.Nos.1283, 1277, 1443 accept the case of the writ petitioners that they are teachers of the University.

17. While in this context we may also refer to Ext.A5, produced in Writ Appeal No.1283/2016, a communication dated 6.7.2015, where the UGC has clarified that henceforth research of supervision shall be entrusted only to a faculty member of the University or its affiliated UGC college/institute. The standing counsel for UGC has also made available to us the UGC (Minimum Standards and Procedure for Award M.Phil/Ph.D Degree) Regulations 2016 where the UGC has further clarified that the only regular professors of University/ college/institution shall be a research supervisor.

18 . The upshot of the above discussion is that the writ petitioners were neither eligible for the benefit of the age of superannuation as prescribed by the UGC in its Regulations nor are they eligible

to be treated as teachers of the University to claim parity with teaching staff in the matter of their age of superannuation. Therefore, the W.A.Nos.1283, 1277, 1443 judgment under appeal cannot be sustained. These appeals are allowed and the judgment under appeal is set aside and the writ petitions will stand dismissed. No costs.

ANTONY DOMINIC JUDGE SHIRCY.V JUDGE smm smm