



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE

HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

WRIT PETITION No. 1944 of 2020

DR. RAJENDER SINGH

Versus

JIWAJI UNIVERSITY AND OTHERS

Appearance:

Petitioner is present in person.

Shri K.N. Gupta - Senior Advocate with Ms. Suhani Dariwal - Advocate and
Shri Rinku Shakya - Advocate for the respondent No.1.

Shri M.P.S. Raghuvanshi - Senior Advocate with Shri Manish Gurjer -
learned counsel for respondent No.3.

Reserved on : 25.09.2025

Pronounced on :30.10.2025

ORDER

This petition, under Article 226 of Constitution of India, has been
filed seeking the following relief (s):

*(1) The order Annexure P/1 and Annexure P/2 may kindly be
quashed.*

*(ii) That the respondents may kindly be directed to permit the
petitioner to discharge the duties upto the age of 65 years.*

*(iii) Any other relief, which this Hon'ble Court deems fit in the
peculiar set of facts and circumstances of the case, may also
kindly be awarded to petitioner.*



2. Brief facts giving rise to the present of the case, in short, are that petitioner was appointed as a Research Assistant at LNIPE, Gwalior (M.P.) vide Office Order No.25/2714 dated 07.07.1981. Thereafter, the petitioner was appointed as Lecturer in Physical Education (Sports Psychology) vide Office Order No.25/373 dated 18.04.1985 at LNIPE, Gwalior (M.P.). Subsequently, the petitioner was promoted to the post of Lecturer in Senior Scale (Rs.3,000–5,000) vide Office Order No.614/21 dated 01.01.1991 at LNIPE, Gwalior (M.P.). Subsequently, vide order dated 29.12.1992, the petitioner was appointed as Director of Physical Education in the pay scale of Rs.4,500–150–7,300/- vide Office Order No. Admin/Inst/921/6258. The petitioner joined the post of Director of Physical Education on 29.12.1992 (afternoon) at Jiwaji University, Gwalior (M.P.) after applying for lien at LNIPE, Gwalior. The petitioner was granted lien for a period of two years on the post of Senior Lecturer from LNIPE, Gwalior vide Office Order No. Conf/718/93 dated 29.03.1993. The members of the Selection Committee were nominated by the Standing Committee on behalf of the Academic Council as per the provisions of Section 49(2) of the Madhya Pradesh Vishwavidyalaya Adhinimyam, 1973 (for brevity, “the Act, 1973”) under Agenda Item No.7(b), Page 267. It was resolved that the appointments to the posts of Director of Physical Education and Assistant Director of Physical Education be made in accordance with Section 49 of the Act, 1973. Two experts were nominated by the Standing Committee on behalf of the Academic Council as per the provisions of Section 49(2) of the Act, 1973. The resolution of the Standing Committee dated 13.05.1992 was approved by the Executive Council in its meeting held on 20.05.1992. The *Kuladhipati* nominated three experts to the Selection Committee for appointments in the



Department of Physical Education to the posts of Director of Physical Education and Assistant Director of Physical Education, as per the provisions of Section 49(2) of the Act, 1973 with reference to D.O. Letter No. VC/92/317 dated 15.10.1992. The petitioner was appointed as Director of Physical Education, Jiwaji University, Gwalior on the recommendation of the Selection Committee duly constituted under the provisions of Section 49(2) of the Act, 1973, applicable to teaching faculty members. The appointment was approved by the Executive Council in its meeting held on 29.12.1992 under Item No.117. The petitioner joined the post of Director, Physical Education on 29.12.1992 (afternoon).

3. Learned counsel for the petitioner submits that by orders dated 26.06.2019 and 10.01.2020, the respondents have deliberately retired the petitioner at the age of 62 years, whereas the prescribed age of retirement as per the UGC Guidelines is 65 years. As per the UGC guidelines and in accordance with Clause 17 of Ordinance No.11, the petitioner has been recognized as a Supervisor by the subject university to supervise the Ph.D. Scholars in the field of Physical Education, Psychology and Education and has supervised thirty two Ph.D and one Post-Doctoral Fellow of UGC till to date and is still doing the same academic job as a supervisor to the other research scholars in Jiwaji University, Gwalior.

4. Learned counsel for the petitioner invited attention of this Court to the provisions contained in the Adhiniyam 1973 which are as under:

(1.1) As per Section 4 Subsection (XX) of the Adhiniyam 1973.
"The teacher of the University means Professor, Readers, Lecturers and **SUCH OTHER PERSONS as may be appointed for imparting instructions or conducting**



research, with the approval of Academic Council in the University or College or Institution maintained or recognized by the University.”

The Petitioner falls under the category of **SUCH OTHER PERSONS** within the said definition. As per provisions in Section 4 Subsection (xx) of Act, the teacher of the university is appointed for, **(i) imparting instructions, or (ii) Conducting research with the approval of academic council.** The petitioner has imparted instructions by teaching theory subjects in the classroom to students of BPED, MPED and M.Phil and have also conducted research for Ph.D students in the respondent university.

5. It is submitted that it is very much clear from Section 49 Sub-section 1 clause (ii) of Adhinyam that appointment to teaching post in the University includes Professor, Reader, Lecturer and any other teaching post of the University. Hence, it is very much clear from Section 4 sub-section (xx), and Section 49 sub-section (1) clause (ii) of Adhinyam that there is provision of any other teaching post in the Adhinyam, 1973 along with Professor, Reader and Lecturer in the respondent university. It is further submitted that it is clear that coordination committee is the supreme committee and by exercising this source of power, the co-ordination committee in their meeting dated 25-26 April, 2000 and 29/May/2000 respectively in its agenda item no. 20 in subject no. 20 decided to amend statute 20 to the extent that the post of Director Physical Education and Librarian were considered as teaching post and these post be removed from statute 20. The decision taken by the Standing Committee and Coordination Committee in its meetings is as under:

विषय क्र. 20 संचालक, शारीरिक शिक्षा, ग्रन्थपालों के संबंध में

परिनियम क्रमांक 20 में संशोधन:

1. विश्वविद्यालय अधिनियम के अन्तर्गत निर्मित परिनियम क्रमांक 20 में संचालक शारीरिक शिक्षा तथा लाइब्रेरियन के पद को विश्वविद्यालय अधिकारी माना गया है। कुलपतिगण ने अवगत कराया कि संचालक,



शारीरिक शिक्षा के पद को उच्चतम न्यायालय ने शैक्षणिक पद मान्य किया है। अतः माननीय उच्चतम न्यायालय के निर्णय को देखते हुए इस पद को परिनियम 20 से पृथक् करना उचित होगा। उनका यह भी मत था, कि संचालक शारीरिक शिक्षा तथा लाइब्रेरियन के पद पर नियुक्तियां म.प्र. विश्वविद्यालय अधिनियम की धारा 49 के तहत शैक्षणिक पदों की तरह की जाती है। विश्वविद्यालय में बी.लिब., एम.लिब, बी.पी.एड., एम.पी.एड. के नियमितधपत्राचार पाठ्यक्रम पढ़ाए जा रहे हैं। ऐसी स्थिति में इन पदों को शैक्षणिक पद घोषित किया जाकर इन्हें परिनियम 20 से पृथक् किया जाए।

2— इस प्रस्ताव पर विस्तृत चर्चा की जाकर समन्वय समिति द्वारा निर्णय लिया गया कि जिन विश्वविद्यालयों में शारीरिक शिक्षा ६ लाइब्रेरी साइंस के पाठ्यक्रम चल रहे हैं एवं वहां पर संचालक, शारीरिक शिक्षा व लाइब्रेरियन के पद पर नियुक्तियां धारा 49 के अन्तर्गत की गई हैं, यहां इन पदों को शैक्षणिक मानते हुए परिनियम 20 से हटाया जाए।

6. It is further submitted by learned counsel for the petitioner that the above decision of coordination committee is still intact with regard to modification of Statute no. 20. It is further submitted that above decision was taken by the coordination committee in reference to the decision laid down by the Supreme Court of India in the case of **P S Ramamohan Rao vs A P Agriculture University and others** AIR, 1997 SCC 3433. The Hon'ble Supreme Court in Civil Appeal No. 4675-4676 of 2019 (**Dr. R. S. Sohane vs. State of M.P. & Others**) considered the identical situation in which the question of age of superannuation of the teachers of private aided educational institutions at par with the government teachers was under consideration. The Hon'ble Supreme Court in para 12, 15, 16 and 18, considered the power and scope of the decisions of the co-ordination committee and held that the co-ordination committee has power to prepare, amend and repeal the statutes. It can do so on its own motion or on recommendation or proposal from the executive council of the university. According to the above provision, the



Statute no. 20 have been modified by the Standing Committee and Coordination Committee and hence therefore, the post of Director Physical Education is a teaching post.

7. Learned counsel submits that by rendering decision in the case of **P.C. Modi vs. Jawaharlal Nehru University and others** in Civil Appeal No. 4267 of 2011, Hon'ble Supreme Court has considered all the judgments and held that the sports officer/PTI will fall within the definition of teacher as they impart instructions to the students of the college in Physical Education and therefore entitled to the age of superannuation up to 62 years of age at par with the teachers. In view of the aforesaid discussion, it is deemed appropriate to quash and set aside the impugned order dated 14th December, 2009 and restore the judgment dated 26th April, 2005 passed by the learned Single Judge. It is declared that the appellant (in that case), who was discharging the duties of a PTI/Sports Officer, would fall within the definition of a "teacher" and would have been entitled to be continued in service till completion of 62 years of age. As the appellant (in that case) was prematurely retired by the respondents at the age of 60 years, it is held that he shall be entitled to all consequential and monetary benefits including, arrear of salary, etc., had he continued in service upto to the age of 62 years. The retiral benefits of appellant (in that case) shall also be computed on a presumption that his age of retirement was 62 years.

8. Learned counsel for the petitioner submits that in identical case i.e. **P.S. Ramamohana Rao, Vs. A. P. Agricultural University and others (in Civil Appeal no. 898 of 1992)**, Hon'ble Supreme Court has considered Director of Physical Education (in that case) as a teacher since his duty to teach skills of various games as well as their rules and practices brings a Director of Physical



Education clearly within main part of definition as a teacher and is entitled to continued in service till he completes 60 years. Now that he has 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.

9. It is further submitted by the learned counsel for petitioner that the petitioner was assigned duty to teach theory subjects of B.P.Ed., M.P.Ed. and M.Phil. Courses in the classroom as well as Practical Classes on the Playgrounds from 1995 to 2020. The petitioner had maintained record of attendance of students while teaching in the classroom for theory and practical subjects at play ground. The parents and the Vice Chancellor were informed about the percentage of attendance of the students by a letter.

10. It is submitted that as per Clause 4.2 of Ordinance no. 55 & 62, only the teachers who has taught the theory subjects in the classroom is required to conduct Internal Assessment Examination for students. The Petitioner have conducted Internal Assessment Tests for Theory and Practical Subjects being assigned to petitioner in the time tables from 1995 to 2020 by respondent University to perform the duty of a classroom teacher. The respondents University have awarded degrees to students of BPED., MPED. And M.Phil on the basis of Internal Assessment Exam conducted and marks submitted by the Petitioner from 1995 to 2020 as per provisions in Ordinance no. 55 and 62. The Petitioner was approved as supervisor for PhD degree for students as per Clause 17 (1) and (ii) of Ordinance No. 11. As per above provision only a full time regular teacher of concerned university/college or scientist of research



establishment recognized as research center can Act as a supervisor. The external supervisors are not allowed. The petitioner was appointed as a Ph.D supervisor by the respondent University from 1992 to 2020. The Petitioner have supervised 32 Ph.D. Scholars and all have been awarded Ph.D. Degrees by the respondent University. Petitioner has also Guided and Supervised 28 M.Phil. Scholars as per Certificate issued by the Registrar of Respondent University. Petitioner was allotted Students for Ph.D. by the Registrar of respondent University. The petitioner conducted research on different topics and the research article published each year were mentioned in the self-appraisal report being submitted to respondents University.

11. It is submitted that it is very clear from the reply of respondent University that the petitioner have performed the duty of the teacher by conducting research and by providing research guidance to Ph.D and M.Phil Scholars in University like any other teacher of the University within the provision of ordinance 11. The petitioner was appointed as Paper Setter for Ph.D. by respondent University as per Clause 9 (a) of Ordinance 11. The petitioner was appointed as Paper Setter for Ph.D. By respondent University as per Clause 9 (a) of Ordinance 11. The Respondent University appointed the petitioner as Internal as well as External Examiner for B.P.Ed. and M.P.Ed. classes, as per Statute no.29. As per the provisions, the Internal Examiner means: In case of theory paper an examiner including a paper setter who is a teacher in a University Teaching Department, School of Studies. Or College maintained by or affiliated to the University. Similarly in case of practical and viva-voce examination an examiner who is a teacher in the Institution whose candidates are being examined at the examination center. External Examiner means an examiner other than an internal examiner. Appointed as HOD, SOS



Physical Education by respondent University. The petitioner was appointed as Member of Admission Committee of Students by respondent University.

12. It is submitted that as per provision in Section 25(vi) and (vii) the Petitioner was appointed as a Member of Academic Council by respondent University. Petitioner was appointed as Superintendent of Examination by respondent University. As per Provisions in Clause (VI) of Section 37 to be read with clause (3) (i) of ordinance 5, the petitioner has performed the duties of Superintendent of Exams. Petitioner was appointed as Member of Result Committee by respondent University. As per Provision in Section 37(VI) of Act to be Read with Clause 11 of Ordinance 5, the petitioner was appointed as a Member of the Result Committee. Petitioner was appointed as Member of Examination Committee by respondent University. As per Provision in Section 44(1) of Act, the Petitioner was appointed as a Member of the Examination Committee for Preparing the Panel of Examiner. The Petitioner was appointed Member of Board of Studies by respondent University as per Provisions of Section 28(2)(i) of Act 1973.

13. It is further submitted that as per Provision in 38 (2) of Statute 31 of Adhiniyam 1973, the Petitioner was granted Earned Leaves which are provided to only teachers of University. The Petitioner was appointed as a Member of Research Degree Committee by respondent University as per Provisions in Clause 12(iii) of Ordinance 11. The Petitioner was appointed as a Member of Research Advisory Committee by respondent University as per Provision in Clause 8(c)(4) of Ordinance 11. The name of the Petitioner is included in the Seniority List of Teachers by respondent University as per provisions in Statute 16(1) (i) (ii). The name of the Petitioner is included in the List of Teachers by respondent University as per Provisions in Statute 13



(1) and (2). Appointment of Petitioner as Member of Selection Committee by respondent University for the Selection of Guest Faculty on Contract as per Regulation 5 (5b and 5c). Proof of being appointed as a Member of the Selection Committee for Selecting Faculty on Contract as per Regulation 5.

14. Hence, lastly it is submitted that it is from the above provisions in the statutes and ordinances that the petitioner was appointed by the Vice Chancellor of the respondent University as Member of Academic Council, Result Committee, Examination Committee, Board of Studies, Superintendent of Examination and was also awarded Earned leaves in parity with other teachers of the University. The petitioner had organized games and sports for the students of the respondent University. Hence it is very clear from the aforesaid provisions in Madhya Pradesh Vishwavidyalaya Adhiniyam 1973, statutes and ordinances that the petitioner have performed all duties of teacher and the modification in statute 20 by the coordination committee as per section 34 subsection 4 (i) of adhiniyam bring Director Physical Education post as a teaching post. The retirement age of the petitioner should be in parity with other teachers of the University.

15. *Per contra*, learned Senior counsel appearing on behalf of respondent submitted that Notification No.1070 dated 24.7.00 (Annexure P/19) and decision of Executive Council Meeting dated 26.2.2010 about designation of petitioner as Professor from the date of appointment has already been quashed by Hon'ble Governor Office by order dated 4.9.2010 under Section 12 (4) of the Adhiniyam. Thereafter, on the basis of order dated 4.9.2010, University Office annulling quashed/cancel the appointment of petitioner as Professor by order dated 20.9.2010 and till yet petitioner has not challenged order dated 4.9.2010 and order dated 20.9.2010 and in consequence of order dated



4.9.2010 and 20.9.2010 treating the petitioner as Director Physical Education has been retired on attaining the age of superannuation 62 years w.e.f. the evening of 26.1.2020 by order dated 10.1.2020.

16. A reply has been filed on behalf of the respondents/University and the stand of the University is that the petitioner was appointed as a Director of Physical Education keeping in view the Adhiniyam of 1973 and the statutes as well as Ordinance framed there under. The respondents have categorically stated that the petitioner is not a teacher as it defined under Section 3 of the Adhiniyam of 1973 and infact is a Director of Physical Education and substantive post of petitioner is director of Physical Education, therefore, he has not been included within the definition of teacher, hence the question of granting any benefit to the petitioner to continue in service at par with the teachers does not arise. The respondents have stated that the Director of Physical Education is certainly not a teacher. The process of appointing a teacher is altogether different and in the selection committee constituted for appointing a teacher, a representative of the Higher Education of State of Madhya Pradesh is a necessary member, whereas no such contingency is required while appointing a Director of Physical Education. The respondents have stated that the judgment relied upon by the learned counsel for the petitioner is distinguishable on facts and there is a subsequent judgment delivered by this Court in the case of **J.N. Vishwavidyalaya Vs. P.C. Modi, 2010 (1) MPLJ 375**, wherein in similar circumstances, the Sport Officer was not treated to be a teacher.

17. Learned counsel for the respondents has placed reliance upon a judgment delivered by the Apex Court in the case of **State of Madhya Pradesh and Ors. Vs. Ramesh Chandra Bajpai, (2009) 13 SCC 635**,



Brejendra Kumar Vs. JNKVV, 2011 (1) MPLJ 589 (DB), Hukum Chand Gupta Vs. Director General, Indian Council (2012) 12 SCC 666 and University Grants Commission Vs. Neha Anil Bobde (2013) 10 SCC 519 and his contention is that the Director of Physical Education by no stretch of imagination can be treated as a teacher keeping in view the statutory provisions governing the field.

18. Heard learned counsel for the parties and perused the record.

19. The relevant statutory provisions under the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973, Statutes and Ordinances, which are necessary for adjudication of the present writ petition reads as under :-

"(A) Section 3 (xx) of the Vishwavidyalaya Adhiniyam, 1973 defines "Teachers" as under :-

"Teachers of the University" means Professors, Readers, Lecturers and such other persons as may be appointed for imparting instructions or conducting research with the approval of the Academic Council in the University or any College or Institution maintained or recognized by the University."

(B) Section 24 (x) of the Vishwavidyalaya Adhiniyam, 1973 includes the following as one of the powers of the Executive Council (which is the apex executive body of the University), as far as appointment of 'teachers' is concerned:

"Subject to the provisions of this Act, and the Statues, Ordinances and regulations made thereunder, the Executive Council shall have the following powers and perform the following duties, namely:



(xx) to institute such Professorship, Readership, Lectureships or other teaching posts as may be proposed by the Academic Planning and Evaluation Board:

Provided that no teaching post shall be instituted without the prior approval of the Commissioner Higher Education.

(C) Section 18 of the Vishwavidyalaya Adhiniyam: Others Officers:

"The appointment of other officers of the University referred to in Section 12, shall be made in such manner and the conditions of their services and powers and duties shall be such as may be prescribed by the Statutes, Ordinances and Regulations."

In view of Section 18, Statute No.20 had been made which reads as under:

Statute No.20 Other Officers of the University -Conditions of Service, Powers and Duties:

(1) In addition to the officers mentioned in clauses (I) to (v) of Section 11 of the Adhiniyam, the following shall be the officers of the University:

(i) to (iv)-

(v) Director of Physical Education

(2) to (4)_____

(5) _____

Provided that in case of appointment to the following posts, the Selection Committee shall be constituted in accordance with the provisions contained under Section 49(2) of the M.P. Adhiniyam, 1973:

Physical Education:

Director



(D) Section 35 of the Vishwavidyalaya Adhiniyam: Statutes:

Subject to the provisions of this Act and the rules made thereunder, the statutes may provide for all or any of the following matters, namely:

(a) to (c) _____

(d) powers and duties of the Registrar, and other officers and employees of the University and the conditions of their services.

(e) to (m) -

(n) the emoluments and terms and conditions of service of the officers and emoluments and terms and conditions of service other than pay scales of teachers of the University paid by the University.

In view of the powers conferred under the above mentioned Sub-clause (d) and (n) of Section 35, the following Statute No.31 was made:

Statute No.31: Conditions of Services for University Employees:

(E) Section 49 of the Vishwavidyalaya Adhiniyam, 1973: Appointment of Teaching posts:

(1) No person shall be appointed:

(i) as a Professor, Reader, Lecturer: or

(ii) to any other teaching post of the University paid by the University except on the recommendation of a committee of selection constituted in accordance with sub-section (2).

(2) The members of the Committee shall be:

(F) Section 63 of the Adhiniyam, 1973: Classification of Teachers:

(1) "Professor" and "Reader" means respectively teachers appointed by the Executive Council on the scales of pay not lower than that approved for a Professor and a Reader by the University Grants Commission and accepted by the State Government and where the scale of pay approved by the University Grants Commission is



higher than that approved by the State Government in this behalf then on the scale of pay as provided by the State Government."

20. The aforesaid statutory provisions of law makes it very clear that the Director, Physical Education is not included within the meaning of the term teacher as defined under Section 3(20) of M.P. Vishwavidyalaya Adhiniyam, 1973. Not only this, Section 18 deals with other officers of the Vishwavidyalaya and for the post of Director Physical Education, a selection committee has to be constituted under Section 49 (2) of M.P. Vishwavidyalaya Adhiniyam, 1973, meaning thereby the post of Director, Physical Education is altogether a different post, other than the teachers under the statutory provisions as stated aforesaid. The petitioner can by no stretch of imagination be designated as Professor keeping in view the statutory provisions. The matter relating to retirement of Sports Officer in respect of University in the State of Madhya Pradesh at par with the teachers was considered at length by this Court in the case of **J.N. Vishwavidyalaya Vs. P.C. Modi (supra)**. The Division Bench of this Court has taken into account the judgment delivered by the Apex Court in the case of **P.S. Ram Mohana Rai (supra)**. Paragraphs 10 to 14 of the judgment delivered in the case of **Brejendra Kumar Pathak Vs. JNKVV (supra)** reads as under:-

10. In view of the aforesaid discussions, it is clear that the Division Bench of this Court in the case of P.C. Modi (supra) has rightly considered the Judgments of the Supreme Court in the case of P.S. Ramamohan Rao (supra) and Ramesh Chandra Bajpai (supra) and we fully agree with the view taken therein. We are also of the considered opinion that as the Supreme Court in the case of Ramesh Chanda Bajpai (supra) having explained the previous judgment in the case of R.S. Ramamohan Rao (supra) and having clarified that it was rendered in the light of particular rules in issue, the same was



rightly considered by the Division Bench in accordance with the law laid down in the case of Ramesh Chandra Bajpai (supra) and therefore, the decision in the case of P.C. Modi (supra) does not require to be reconsidered or referred to a large Bench as submitted by the learned counsel for the appellant. We are also of the opinion that there is no conflict between the aforesaid two judgments of the Supreme Court.

11. Besides that, it appears that the judgment of the Apex Court in case of R.S. Ramamohan Rao (supra) was rendered on 31.7.1997 by a Bench consisting of two Hon'ble Judges, whereas the judgment in State of M.P. Vs. Ramesh Chandra Bajpai (supra) was rendered later, i.e. on 28.7.2009, by a Bench consisting of three Hon'ble Judges. It is a settled legal position that where there is a conflict of opinion between two decision of the Apex Court rendered by the Benches of equal strength, later decision shall prevail Reference may be made to the judgment of the Apex Court rendered in Dalbir Singh Vs. State of MP (2004) 5 SCC 334, wherein the Supreme Court in para 11 has approved the judgment of Punjab and Haryana High Court, relying upon the later judgment where the earlier judgment was in conflict with the later one. Thus, the judgment rendered in Ramesh Chandra Bajpai (supra), which was decided on 28.7.2009, will prevail. Besides that the judgment in State of M.P. Vs. Ramesh Chandra Bajpal (supra) is of larger Bench as it was headed by three Hon'ble Judges whereas, the judgment in R.S. Ramamohan Rao (supra) was headed by two Hon'ble judges.

12. In the light of the above, we do not find any error in the judgment/order of the learned Single Judge. At this stage, the learned counsel for the appellant submits that he was permitted to continue to work till the age of 61 years and 3 months and therefore, the respondents be directed not to recover the salary already paid to the appellant for the period of service rendered by him beyond the age of 60 years.



13. Learned counsel appearing for the University fairly submits that the salary already paid to the appellant for the period for which he has worked will not be recovered by the University.

14. In view of the above, we do not find any merit in the appeal and the same deserves to be dismissed. However, in the facts of the case, it is provided that the salary and other benefits already paid to the appellant for the period of service rendered by him beyond the age of 60 years till his continuance shall not be recovered from him. However, for all other purposes, such as fixation of pension and post retiral benefits etc., the appellant would be deemed to have retired on attaining the age of 60 years."

21. Keeping in view the aforesaid judgment, this Court is of the considered opinion that the petitioner cannot be permitted to continue in service at par with the teachers of the University.

22. The Apex Court in the case of ***State of Madhya Pradesh and Ors. Vs. Ramesh Chandra Bajpai (supra)*** again in case of Physical Training Instructor after taking into account the judgment delivered in the case of ***P.S. Ram Mohana Rai (supra)*** in paragraph 25 and 26 has held as under:-

"25. We may observe that definition of 'teacher' contained in Section 2(n) of the Andhra Act was an expansive one to include those persons who were not only been imparting instructions but also were conducting and carrying on research for extension programmes. It also included those who had been declared to be a teacher within the purview of the definition thereof in terms of any Statutes framed by such State.

26. In our view, the aforementioned decision has been misapplied and misconstrued by the High court. It is now well settled principles of law that a decision is an authority for what it decides and not what can logically be deduced therefrom. In ***Ramamohana Rao (supra)***, this Court, having regard to the



nature of duties and functions of Physical Director, held that that post comes within the definition of teacher as contained in Section 2(n). The proposition laid down in that case should not have been automatically extended to other case like the present one, where employees are governed by different sets of rules.

23. Keeping in view the aforesaid judgment, the petitioner cannot claim the parity in pay scale and in respect of retirement age at par with teachers. The Apex Court in the case of *Hukum Chand Gupta (supra)* again dealt with the issue of parity in pay and the paragraph 20 of the aforesaid judgment reads as under:-

“20. We are also not inclined to accept the submission of the appellant that there can be no distinction in the pay scales between the employees working at Headquarters and the employees working at the institutional level. It is a matter of record that the employees working at Headquarters are governed by a completely different set of rules. Even the hierarchy of the posts and the channels of promotion are different. Also, merely because any two posts at the Headquarters and the institutional level have the same nomenclature, would not necessarily require that the pay scales on the two posts should also be the same. In our opinion, the prescription of two different pay scales would not violate the principle of equal pay for equal work. Such action would not be arbitrary or violate Articles 14, 16 and 39D of the Constitution of India. It is for the employer to categorize the posts and to prescribe the duties of each post. There can not be any straitjacket formula for holding that two posts having the same nomenclature would have to be given the same pay scale, Prescription of pay scales on particular posts is a very complex exercise. It requires assessment of the nature and quality of the duties performed and the responsibilities shouldered by the incumbents on different posts. Even though, the two posts may be referred to by the same name, it would not lead to the necessary inference that the posts are identical in every manner. These are matters to be assessed by expert bodies like the



employer or the Pay Commission. Neither the Central Administrative Tribunal nor a Writ Court would normally venture to substitute its own opinion for the opinions rendered by the experts. The Tribunal or the Writ Court would lack the necessary expertise undertake the complex exercise of equation of posts or the pay scales."

24. A coordinate Bench of this Court in the case of **Dr. Mohd. Iqbal Quraishi Vs. His Excellency, Kuladhipati of DAVV reported in 2015 (1) MPLJ 8** has already dealt with the same issue. Para 11 of the aforesaid judgment reads as under:

"11. In the light of the aforesaid judgment, as the petitioner was appointed on the post of Director of Physical Education, keeping in view the statutory provisions as contained under the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 and the statute, ordinance framed thereunder, by no stretch of imagination can be treated as a teacher. He is holding the post of Director and has to retire as as a Director not as a Teacher. The writ petition is, therefore, accordingly dismissed."

25. In view of the law laid down by the coordinate Bench of this Court in the case of **Dr. Mohd. Iqbal Quraishi (supra)** in which it has been held that the post of Director of Physical Education keeping in view the statutory provisions as contained in the Adhiniyam, 1973 cannot be treated as a Teacher. The same has been decided by Hon'ble Apex Court in the case of **State of M.P. and others Vs. Ramesh Chandra Bajpai reported in (2009) 13 SCC 635**, and **University Grants Commission and another Vs. Neha Anil Bobde (Gadekar) reported in (2013) 10 SCC 519** therefore, Director of Physical Education, by no stretch of imagination can be treated as a Teacher keeping in view of the statutory provisions governing the field. In **Ramesh Chandra Bajpai (supra)** the Hon'ble Apex Court has held as under:



14. In para 6 of the impugned order, the Division Bench of the High Court observed that the rules governing and regulating the service of the respondent make a distinction between Physical Training Instructor and teacher in the matter of status and pay scale, but proceeded to sustain the direction given by the learned Single Judge mainly on the premise that the orders passed in the cases of other Physical Training Instructors have not been assailed. The Division Bench also relied upon the ratio of judgment of this Court in *Ramamohana Rao case* [(1997) 8 SCC 350 : 1998 SCC (L&S) 46] and observed that the nature and duties of the Physical Training Instructors are on a par with those of teachers.

15. In our view, the approach adopted by the learned Single Judge and the Division Bench is clearly erroneous. It is well settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity in the designation or nature or quantum of work is not determinative of equality in the matter of pay scales. The court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts.

26. In our view, the aforementioned decision has been misapplied and misconstrued by the High Court. It is now well-settled principle of law that a decision is an authority for what it decides and not what can logically be deduced therefrom. In *Ramamohana Rao* [(1997) 8 SCC 350 : 1998 SCC (L&S) 46] this Court, having regard to the nature of duties and functions of Physical Director, held that that post comes within the definition of teacher as contained in Section 2(n). The proposition laid down in that case should not have been automatically extended to other case like the present one, where employees are governed by different sets of rules.



26. The Co-ordinate Bench of this Court has held in the case of ***Dr. Mohd Iqbal Quraishi (supra)***:

10. Keeping in view the aforesaid judgment, the petitioner cannot claim the parity in pay-scale and in respect of retirement age at par with teachers. The Apex Court in the case of *Hukum Chand Gupta* (supra), again dealt with the issue of parity in pay and the paragraph 20 of the aforesaid judgment reads as under:

“20. We are also not inclined to accept the submission of the appellant that there can be no distinction in the pay-scales between the employees working at Headquarters and the employees working at the institutional level. It is a matter of record that the employees working at Headquarters are governed by a completely different set of rules. Even the hierarchy of the posts and the channels of promotion are different. Also, merely because any two posts at the Headquarters and the institutional level have the same nomenclature, would not necessarily require that the pay-scales on the two posts should also be the same. In our opinion, the prescription of two different pay-scales would not violate the principle of equal pay for equal work. Such action would not be arbitrary or violate Articles 14, 16 and 39D of the Constitution of India. It is for the employer to categorize the posts and to prescribe the duties of each post. There cannot be any straitjacket formula for holding that two posts having the same nomenclature would have to be given the same pay-scale. Prescription of pay-scales on particular posts is a very complex exercise. It requires assessment of the nature and quality of the duties performed and the responsibilities shouldered by the incumbents on different posts. Even though, the two posts may be referred to by the same name, it would not lead to the necessary inference that the posts are identical in every manner. These are matters to be assessed by expert bodies like the employer or the Pay Commission. Neither the Central Administrative Tribunal nor a writ Court would normally venture to substitute its own opinion for the opinions rendered by the experts. The



Tribunal or the writ Court would lack the necessary expertise undertake the complex exercise of equation of posts or the pay-scales.”

11. In light of the aforesaid judgment, as the petitioner was appointed on the post of Director of Physical Education, keeping in view the statutory provisions as contained under the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 and the statute, ordinance framed thereunder, by no stretch of imagination can be treated as a teacher. He is holding the post of Director and has to retire as a Director not as a Teacher. The writ petition is, therefore, accordingly dismissed.

27. The Division Bench of this Court in WA No.742/2014 upheld the order passed in ***Dr. Mohd Iqbal Quraishi (supra)***.

28. The Supreme Court has held in the case of **University Grants Commission and another v. Neha Anil Bobde (Gadekar) (2013) 10 SCC 519** as under:

31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued, the courts shall keep their hands off since those issues fall within the domain of the experts. This Court in *University of Mysore v. C.D. Govinda Rao* [AIR 1965 SC 491], *Tariq Islam v. Aligarh Muslim University* [(2001) 8 SCC 546 :2002 SCC (L&S) 1] and *Rajbir Singh Dalal v. Chaudhary Devi Lal University* [(2008) 9 SCC 284 : (2008) 2 SCC (L&S) 887], has taken the view that the court shall not generally sit in appeal over the opinion expressed by the expert academic bodies and normally it is wise and safe for the courts to leave the decision of the academic experts who are more familiar with the problem they face, than the courts generally are. UGC as an expert body has been entrusted with the duty to take steps *as it may think fit* for the determination and maintenance of standards of teaching, examination and research in the university. For attaining the said standards, it is open to UGC to lay down any “qualifying criteria”, which has a rational nexus



to the object to be achieved, that is, for maintenance of standards of teaching, examination and research. The candidates declared eligible for Lectureship may be considered for appointment as Assistant Professors in universities and colleges and the standard of such a teaching faculty has a direct nexus with the maintenance of standards of education to be imparted to the students of the universities and colleges. UGC has only implemented the opinion of the experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or discriminatory or violative of Article 14 of the Constitution of India.

29. The following regulation of “**UGC REGULATION ON MINIMUM QUALIFICATIONS FOR APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES AND MEASURES FOR THE MAINTENANCE OF STANDARDS IN HIGHER EDUCATION, 2010**” is important to decide the controversy involved in the present case.

3.1.0 The direct recruitment to the posts of Assistant Professors, Associate Professors and Professors in the Universities and Colleges shall be on the basis of merit through all India advertisement and selections by the duly constituted Selection Committees as per the provisions made under these Regulations to be incorporated under the Statutes/Ordinances of the concerned university. The composition of such committees should be as prescribed by the UGC in these Regulations.

3.2.0 The minimum qualifications required for the post of Assistant Professors, Associate Professors, Professors, Principals, Assistant Directors of Physical Education and Sports, Deputy Directors of Physical Education and Sports, Directors of Physical Education and Sports, Assistant Librarians, Deputy Librarians, Librarians will be those as prescribed by the UGC in these Regulations.



4.4 ASSISTANT PROFESSOR

i. Good academic record with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level, in the relevant subject or an equivalent degree from an Indian/Foreign University.

ii. Besides fulfilling the above qualifications, candidates must have cleared the National Eligibility Test (NET) for lecturers conducted by the UGC, CSIR, or similar test accredited by the UGC. Notwithstanding anything contained in the sub-clauses (i) and (ii) to this Clause 4.4.2.1, candidates, who are, or have been awarded Ph. D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities / Colleges /Institutions.

iii. NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not conducted.

OR

1. A traditional and a professional artist with highly commendable professional achievement in the concerned subject, who should have:

- (a) Studied under noted/reputed traditional masters and has thorough knowledge to explain the subject concerned;
- (b) A high grade artist of AIR/TV; and
- (c) Ability to explain the logical reasoning of the subject concerned and adequate knowledge to teach theory with illustrations in that discipline.

4.6.1. UNIVERSITY DIRECTOR OF PHYSICAL EDUCATION AND SPORTS



- (i) A Ph.D. in Physical Education.
- (ii) Experience of at least ten years as University Deputy or fifteen years as University Assistant DEs/College (selection grade).
- (iii) Participation in at least two national/international seminars/conferences.
- (iv) Consistently good appraisal reports.
- (v) Evidence of organizing competitions and conducting coaching camps of at least two weeks' duration.
- (vi) Evidence of having produced good performance teams/athletes for competitions like state/national/inter-university/combined university, etc.

7 (d) Director of Physical Education (University):

- (i) Post of Director Physical Education in universities shall be in the Pay Band of Rs. 37400-67000 with AGP of Rs. 10000.
- (ii) Post of Director Physical Education (University) shall continue to be filled through direct recruitment and the existing conditions of eligibility i.e. the minimum qualification number of years of relevant experience and other conditions prescribed by the UGC shall continue to be the eligibility for recruitment.
- (iii) Pay of the incumbents shall be fixed at the appropriate stage in the Pay Band of Rs.37,400 – 67,000/- as per 'fixation formula' of the Government of India for 6th CPC.

30. The minimum qualification for the post of Director of Physical Education and sports and minimum qualification of Assistant Professor, Professor teacher is different.

8.F Age of Superannuation:

- (i) In order to meet the situation arising out of shortage of teachers in universities and other teaching institutions and the consequent vacant positions therein, the age of superannuation for teachers in Central Educational Institutions has already been enhanced to sixty five years vide the Department of Higher Education letter No.F.No.119/2006-U.II dated 23.3.2007, for those involved in class room teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period.



Consequent on upward revision of the age of superannuation of teachers, the Central Government has already authorized the Central Universities, vide Department of Higher Education D.O. letter No.F.1-24/2006-Desk(U) dated 30.3.2007 to enhance the age of superannuation of Vice- Chancellors of Central Universities from 65 years to 70 years, subject to amendments in the respective statutes, with the approval of the competent authority (Visitor in the case of Central Universities).

(ii) Subject to availability of vacant positions and fitness, teachers shall also be reemployed on contract appointment beyond the age of sixty five years up to the age of seventy years. Re-employment beyond the age of superannuation shall, however, be done selectively, for a limited period of 3 years in the first instance and then for another further period of 2 years purely on the basis of merit, experience, area of specialization and peer group review and only against available vacant positions without affecting selection or promotion prospects of eligible teachers.

(iii) Whereas the enhancement of the age of superannuation for teachers engaged in class room teaching is intended to attract eligible persons to a career in teaching and to meet the shortage of teachers by: retaining teachers in service for a longer period, and whereas there is no shortage in the categories of Librarians and Directors of Physical Education, the increase in the age of superannuation from the present sixty two years shall not be available to the categories of Librarians and Directors of Physical Education.

31. As per aforesaid regulation due to shortage of teachers in universities and other teaching institutions and to attract eligible persons to the teaching career and to retain teachers in service for a longer period age of superannuation is increased from 62 years to 65 years and as there is no shortage of Director of Physical Education, the increase in the age of



superannuation from the present sixty two years shall not be available to the category of Director of Physical Education (petitioner).

32. As per Annexure P/13, Statute No.20 i.e. “Other officers of the University conditions of service power and duties” referred under Section 18 of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 (herein after referred to as “Adhiniyam, 1973”) the Director of Physical Education is officer of the University. As per Adhiniyam 1973, the appointment of other officers of the University referred to in Section 12 shall be made in such manner and the conditions of their services and powers and duties shall be such as may be prescribed by the Statutes, Ordinances and Regulations. On the aforesaid basis, the petitioner was appointed to the post of Director of Physical Education, as per the Committee’s recommendation at Serial No. 117 (Annexure P/12), and consequently, the appointment order dated 29.12.1992 (Annexure P/7) was issued. The petitioner is not a teacher as it defined under Section 3 of the Adhiniyam of 1973 and infact is a Director of Physical Education and substantive post of petitioner is director of Physical Education, therefore, he has not been included within the definition of teacher, hence the question of granting any benefit to the petitioner to continue in service at par with the teachers does not arise.

33. Perusal of the record reveals that Notification No.1070 dated 24.7.00 (Annexure P/19) and decision of Executive Council Meeting dated 26.2.2010 about designation of petitioner as Professor from the date of appointment has already been quashed by Hon'ble Governor Office by order dated 4.9.2010 under Section 12 (4) of the Adhiniyam. Thereafter, on the basis of order dated 4.9.2010, University Office annulling quashed/cancel the appointment of petitioner as Professor by order dated 20.9.2010 and till yet petitioner has not



challenged order dated 4.9.2010 and order dated 20.9.2010 and in consequence of order dated 4.9.2010 and 20.9.2010 treating the petitioner as Director Physical Education has been retired on attaining the age of superannuation 62 years w.e.f. the evening of 26.1.2020 by order dated 10.1.2020.

34. In light of the aforesaid judgments, facts and grounds, as the petitioner was appointed on the post of Director, Physical Education, keeping in view the statutory provisions as contained under the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 and the statute, ordinance framed thereunder, by no stretch of imagination can be treated as a teacher. Even if the petitioner has performed all the duties of a teacher, that by itself cannot confer upon the petitioner the status of a teacher, since the petitioner was never appointed as such. He is holding the substantive post of Director and has to retire as a Director not as a Teacher. The writ petition is, therefore, accordingly *dismissed*.

(Anand Singh Bahrawat)
Judge

Ahmad