

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.09.2018
CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
W.P.No.7790 of 2017
and W.M.P.Nos. 8533 & 8534 of 2017

N.Shrividhya

... Petitioner

Vs.

- 1.The Regional Accounts Officer,
(Audit),
Department of School Education,
Coimbatore - 641 001.
- 2.The Director,
Directorate of School Education,
Chennai - 600 006.
- 3.The District Educational Officer,
Gobichettypalaym,
Erode District.
- 4.The Secretary,
Sakthi Higher Secondary School,
Sakthi Nagar - 638 315,
Erode District.
- 5.The Registrar,
Vinayaka Missions University,
Salem - 636 308.
- 6.The Secretary,
University Grants Commission,
New Delhi - 110 002.

...Respondents

Prayer : The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in the form of an audit objection dated 26.11.2014 passed by the 1st respondent, quash the same and consequently direct the respondents 1 to 4 to continue the payment of incentive for qualifying M.Phil., degree granted by the 5th respondent.

For Petitioner : Mr.N.Manokaran
For Respondent : Mr.K.Karthikeyan,
Government Advocate (for R1 to R3)
No Appearance (for R4)
Mr.R.Parthasarathy (for R5)
Mr.P.R.Gopinathan (for R6)

C O M M O N O R D E R

The impugned order dated 03.10.2012 has been issued by the 1st respondent/Regional Accounts Officer on the basis of the audit objection raised by the audit party that the incentive increment cannot be granted in respect of the degrees which are all not valid as per the University Grants Commission Act and its Regulations. Aggrieved from and out the said order dated 03.10.2012, the writ petitioner is constrained to move the present Writ Petition.

2.The learned counsel for the petitioner states that the petitioner was appointed as B.T. Assistant and completed his M.Phil degree in the year 2008 from the 5th respondent/Vinayaka Missions University at Salem. The learned counsel for the petitioner states that based on the application submitted by the writ petitioner for grant of incentive increment, the same was granted initially to the petitioner. However, the incentive increment granted for acquiring the higher educational qualification of M.Phil degree, the Audit Officer raised an objection on the ground that the degree possessed by the writ petitioner is not a valid degree as per the University Grants Commission Act and its Regulations. Thus, the grant of incentive increment was objected by the Regional Accounts Officer, based on that, the incentive increment granted was cancelled and the consequential recovery was issued. Undoubtedly, the incentive increment was granted based on the application submitted by the writ petitioner. This apart, the degree of M.Phil possessed by the writ petitioner was from the 5th respondent/Vinayaka Missions University which is a Deemed University under Section 3 of the University Grants Commission Act.

3.The learned Government Advocate also informed this Court that the degree of M.Phil obtained by the writ petitioner is an invalid degree and therefore, the writ petitioner is not entitled for grant of any incentive increment as per the Government Orders in force.

4.In order to ascertain the status of the 5th respondent University and to ascertain the legal validity of the degrees granted by the Deemed University under the University Grants Commission Act, the University Grants Commission has been impleaded as a party in this Writ Petition.

5.The learned counsel appearing on behalf of the University Grants Commission relying on the counter affidavit filed by the University Grants Commission has stated that the Deemed Universities declared under Section 3 of the University Grants Commission Act are not empowered to conduct any courses through distance education mode without the permission of the Government

of India/University Grants Commission. The said position has been enumerated in paragraphs 13, 14 and 21 of the counter affidavit filed by the University Grants Commission and the same is extracted hereunder:

"13.It is further submitted that the erstwhile Regular - Distance Education Council (DEC) had granted Ex-post facto Institutional Recognition to the Deemed University for the programs offered by it through Distance Mode upto the Academic Year 2005.

14.It is submitted that the DEC had given Institutional Recognition to the Deemed University for a period of 5 years with effect from 28.02.2001 and further the Programme-wise Recognition was accorded to the Deemed University for 3 years from the Academy Session 2011-12 to 2013-14 for offering specific programmes and thereafter no further Recognition had been granted to the Deemed University either by DEC or by this Respondent/University Grants Commission to offer any programme through Distance mode.

....

21.It is further respectfully submitted that this Respondent/University Grants Commission, prior to the Notification cited supra, had issued a Circular to Vice Chancellors of all deemed Universities vide DO No.F.6-7/2003 (CPP-I) dated 16.03.2004 to comply with the directions issued by University Grants Commission with regard to opening of study centres/academic centres, offer of new programmes and opening of off-campus and clarified that all the degrees awarded by deemed universities in violation of instructions issued by University Grants Commission, will be regarded as unspecified. The copy of letter/circular No.F.6-7/2003 (CPP-I) dated 16.03.2004 is annexed herewith as Annexure R-6/2, Vide these Guidelines, the following observations and stipulations were made:

"The Government on the recommendations of the University Grants Commission has conferred the status of deemed to be university on your institution. As it is, all such institutions are expected to bring about qualitative improvement in higher education by way of realizing excellence of the highest order in their chosen fields.

Over the time, however, it has been observed that some of the deemed to be universities are not functioning as per well-defined objectives and limits and are introducing new courses, opening study centre/academic centre/off campuses etc. without taking any approval from

the University Grants Commission. At time these centres are opened even in the absence of proper physical and academic infrastructure.

The University Grants Commission has taken a serious note of it. In keeping with the University Grants Commission's mandate to maintain the standard of teaching and research in universities, it has been decided that the Deemed to be Universities will have to obtain the prior approval of the University Grants Commission for starting new courses, for opening academic centres/study centre/off campuses etc. All those deemed to be Universities which are already engaged in such kinds of activities shall solicit University Grants Commission's approval within six months to issue of this letter failing which the courses/centres run by the Universities shall be declared unrecognized by the University Grants Commission. A copy of the University Grants Commission guidelines and procedure to be adopted for establishing new departments within the campus, setting up off campus centre(s)/Institution(s) off-shore campus (es) and starting distance education programme, is enclosed along with the prescribed performa. You are requested to follow these guidelines in letter and spirit for establishing new centres and for already established centres. The proposals in the prescribed performa shall be sent to the University Grants Commission for new as well as continuing courses/centres for consideration/ex-post-facto approval of the Commission.

It may please be noted that the degrees award by the deemed universities in violation of the instruction contained in the enclosed guidelines shall be regarded as unspecified and render the deemed universities to be punishable under relevant provisions of the University Grants Commission Act, 1956.""

6.This Court is of an opinion that grant of incentive increment is a concession granted to the teaching staff in the Department of School Education. In order to encourage the morale of the teachers, incentive increments are granted for acquisition of higher educational qualifications. Thus, the said concession is not part and parcel of the regular scale of pay and pay rules. Grant of incentive increment is only applicable to the teaching staff of the Education Department and the same has not been granted to the staff working in all other

departments in the State Government. Such being the special nature of concession provided especially to encourage the teachers to acquire the higher qualification, the same is to be regulated strictly in accordance with the terms and conditions of the orders in force. There cannot be any undue advantage in respect of grant of incentive increment even by the authorities concerned.

7.The acquisition of higher educational qualification by the respective teachers must be certainly utilised for the welfare of the students and to impart better education to the students, who are studying in schools and colleges. Such being the purpose and object of the grant of incentive increment, the degrees obtained from the universities must be a valid degree in the eye of law. Teachers cannot acquire degrees from open Universities and from unrecognised Universities or unrecognised courses conducted by the recognised Universities cannot be considered for grant of incentive increment. At the outset, the degrees granted only in accordance with law alone can be taken into account for the purpose of granting incentive increment, failing which the very object of grant of incentive increment would be defeated.

8.The Hon'ble Supreme Court of India also time and again reiterated that for securing public employment and for grant of such concessions by the State Government, the degrees possessed by the candidates must be a valid degree. In the absence of establishing the validity of the degrees possessed by the candidates, they are not entitled to get the public employment and other benefits granted by the Government. It is a primary rule that the courses conducted by the respective universities must be approved by the University Grants Commission under the provisions of the University Grants Commission Act and its Regulations. There cannot be any violation in respect of the University Grants Commission Regulations for grant of degrees. Various nature of degrees, can be granted are enumerated in the University Grants Commission Act and its Regulations. Thus, the degrees only approved by the University Grants Commission alone can be considered as a valid degree for the purpose of securing public employment and to receive all other Government concessions and benefits. This being the principle to be followed, this Court is of an opinion that the degree of M.Phil now possessed by the writ petitioner is an invalid one in view of the fact that the 5th respondent/Vinayaka Missions University is not authorised to conduct courses through distance education mode.

9.In paragraph No.21 of the counter affidavit, the University Grants Commission categorically stated that they had issued a circular to Vice Chancellor of all Deemed Universities

in DO No.F.6-7/2003 (CPP-I) dated 16.03.2004 to comply with the directions issued by them with regard to opening of study centres/academic centres, offer of new programmes and opening of off-campus and clarified that all the degrees awarded by the Deemed Universities in violation of instructions issued will be regarded as unspecified. This apart, the circular is comprehensive in nature in respect of courses to be conducted by the Deemed Universities. Thus, the course of M.Phil conducted by the 5th respondent/Vinayaka Missions University through distance education mode is certainly in violation of the circular issued by the University Grants Commission. In this regard, the University Grants Commission is empowered to initiate appropriate penal actions under the provisions of the University Grants Commission Act and its Regulations. It is left open to the University Grants Commission to initiate appropriate action in view of the fact that the poor students are exploited in this manner by such Deemed Universities for their personal gains. In the event of serious irregularities by such Deemed Universities, the University Grants Commission is competent to initiate all appropriate action, even to cancel the status of Deemed University. However, such actions are rarely taken by the University Grants Commission for the reasons not known to the Court. The University Grants Commission is the authority to regulate the courses to be conducted by various Universities across the country. Such being the status of the University Grants Commission under the statute, they are duty bound to inspect and vigil over such illegal activities of the Universities so as to ensure that the interest of the students, who all are studying in the Universities are protected. The students who may not be aware of such approval or recognition to be obtained from the University Grants Commission. Ultimately after completion of the degree, they came to know that such courses are not approved by the University Grants Commission. Thus, the University concerned must be accountable and answerable and the authorities of the University Grants Commission and the U.G.C. also duty bound to initiate all appropriate actions against such Universities which are all conducting the courses not approved by the University Grants Commission or through its Regulations.

10.The learned counsel for the petitioner states that though the incentive increment was granted based on the application submitted by the writ petitioner, there was no suppression of fact or otherwise on the part of the writ petitioner. Thus imposing recovery will cause hardship to the writ petitioner. The learned Government Advocate in this regard made a submission that based on the judgment of the Hon'ble Supreme Court of India in the matter of imposing recovery, the Government also issued orders in G.O.Ms.No.286 Finance (Pension Department) dated 28th August 2018. While imposing recovery in respect of Government

servants, the judgment of the Hon'ble Supreme Court as well as the Government Order issued based on the judgment of Hon'ble Supreme Court is to be followed scrupulously and appropriate decisions ought to be taken in this regard. It is needless to state that the guidelines issued in this regard by the Government in Government Order cited supra should be followed before imposing recovery on the Government servants including the writ petitioner. In this view of the matter, this Court is of an opinion that the writ petitioner is not entitled for grant of any incentive increment for the qualification of M.Phil degree obtained by him from the 5th respondent/Vinayaka Missions University, which is not approved. In respect of recovery, the respondents are directed to pass appropriate orders in the light of the Government Order issued in G.O.Ms.No.286 Finance (Pension Department) dated 28.08.2018 within a period of twelve (12) weeks from the date of receipt of a copy of this order.

11. Accordingly, this Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

gsa/v

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

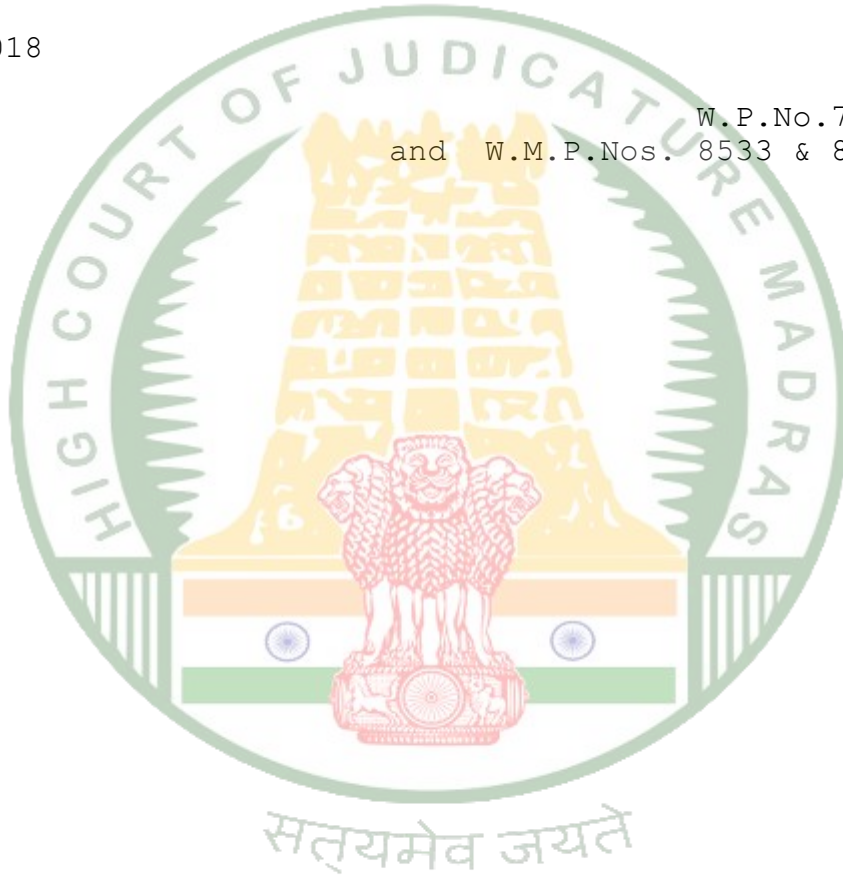
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4. The Secretary,
University Grants Commission,
New Delhi - 110 002.

5.The Headmaster,
Government Higher Secondary School,
Bairnatham - 636 905,
Dharmapuri District.

+lcc to M/s.N.Manokaran, Advocate SR.NO.61949
+lcc to Government Pleader SR.NO.62134

RGN(CO)
sm:26.9.2018

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