BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.11.2021
CORAM:
THE HONOURABLE MR.JUSTICE B.PUGALENDHI
W.P(MD)No.14073 of 2020
and W.M.P.(MD)Nos.11741, 11745 and 11747 of 2020
and 13144 of 2021

M.Anandhi ... Petitioner

versus

1. State
Rep. by its Secretary to Government,
Fort St. George,
Chennai - 9.

2. State
Rep. by its Director of School Education,
College Road,
Chennai - 6.

3. The Regional Accounts Officer,
Office of the Regional Accounts Office (Audit)
School Education Department,
Madurai - 625 002.

4. State
Rep. by its Chief Educational Officer,
Dindigul District,
Dindigul.

5. The Headmaster,
Government Higher Secondary School,
Sithaiyankottai,
Athoor Taluk, Dindigul District.

6. The Assistant Controller of Examinations,
Vinayaka Missions University,
Salem. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari, to call for the records pertaining to audit report of the third respondent dated 10.01.2019 to stop the incentive increment and recover the amount already paid as incentive increment for the degree possessed by petitioner for M.Phil. degree granted by the sixth respondent and quash the same as illegal and arbitrary and consequently, direct the respondents to continue to pay the incentive increment to the petitioner.

For Petitioner : Mr.R.Senthilkumar
For R1 to R5 : Mr.J.Ashok,
Additional Government Pleader

ORDER

This writ petition has been filed as against the audit report of the third respondent dated 10.01.2019, in and by which, the incentive increment granted to the petitioner for having possessed M.Phil degree was denied.

2. The petitioner is working as a Post Graduate Teacher in the Government (Boys) Higher Secondary School, Natham, Dindigul District. She joined the service in the year 2013 and her probation was also declared in the year 2015. The petitioner is qualified with M.Com. (Commerce) degree from Madurai Kamaraj University and also qualified with M.Phil degree from Vinayaka Mission University, the sixth respondent herein. The Government, vide G.O.Ms.No.42, Education Department, dated 10.01.1969, introduced a scheme for sanctioning of incentive increments to the Teachers, who possessed additional higher qualification than the minimum qualification prescribed for the post, in which, they are serving. Since the petitioner possessed M.Phil degree, she submitted an application for grant of incentive increment under this scheme and the same was also granted from the year 2013. However, the third respondent, vide impugned audit report dated 10.01.2019, raised certain objections on the incentive increment paid to the petitioner and instructed to recover the incentive increment which has already been granted to the petitioner.

3. The learned counsel for the petitioner submits that similar such orders of recovery were challenged before the Principal Seat of this Court in W.P.Nos.42675 to 42687 and 42689 of 2016 and the same were dismissed by a common order dated 06.09.2018 that the writ petitioners are not entitled for grant of incentive increment for M.Phil. degree obtained by them from the sixth respondent/Vinayaka Mission University, Salem. Aggrieved over the same, writ appeal has been filed in W.A.No.2802 of 2018, wherein, interim stay has been granted.

4. The learned counsel for the petitioner submits that the sixth respondent University is deemed to be an University under Section 3 of University Grants Commission Act, 1956 and any degree/diploma awarded by the University has to be recognized by the Government for the purpose of employment. Apart from that, the Distance Education Committee accorded post facto approval for Vinayaka Mission University, Salem, in August 2003 for admission till 2005 to conduct the courses through Distance Education Committee. The Government of Tamil Nadu, Department of Higher Education, vide G.O.Ms.No.91 dated 03.04.2009, declared that M.Phil and Ph.D. Degree obtained through correspondence/distance education/open university system are ineligible for government appointment and appointment as Lectures in Colleges, Universities including self-financing colleges. Thereafter, the Government of Tamil Nadu issued a Government Order in G.O.Ms.No.39 (Personnel and Administrative Reforms Department) dated 30.04.2014, whereby, an

amendment has been made in Rule 19 of Schedule II. According to the amendment, Universities / Higher Education Institutions through distance education have been included to the Schedule II of Rule 19, wherein, the said Vinayaka Mission Research Foundation (Deemed University), Salem, has also been included at S.No.523. He further submits that the Registrar of Madras University sent a letter dated 27.10.2010 to all the Principles of Arts and Science Colleges affiliated to University of Madras that the M.Phil degree obtained by the candidates through the correspondence/Distance Education (Open University System) prior to 03.04.2009 (i.e.,) the date of G.O.No.91, dated 03.04.2009, will be considered as eligible for employment and the M.Phil degree obtained through correspondence/distance education/open university systems after 03.04.2009 are ineligible. However, the third respondent, without verifying the same, vide impugned audit report dated 10.01.2019, raised his objections and also instructed to recover the incentive increment, which has already been granted to the petitioner.

5. The learned Government Advocate appearing for the respondents submits that the petitioner is stated to have secured M.Phil degree in the month of January 2009. The Government of Tamil Nadu, on 29.08.2006, had prohibited the Universities from offering M.Phil courses through Distance Education from the Academic Year 2007-08. However, the petitioner has not challenged the decision of the Government of Tamil Nadu dated 29.08.2006. He further submits that the grant of incentive increment is a concession granted to the teaching staff in the Department of School Education and in order to encourage the morale of the teachers, incentive increments are being granted for acquisition of higher educational qualifications. Thus, the said concession is not a 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.

6. The learned Government Advocate appearing for the respondents further submits that the Hon'ble Apex Court, 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 Grant Commission and its Regulations. There cannot be any violation of University Grants Commission Regulations for grant of degrees. Various nature of degrees can be granted as

enumerated in University Grants Commission Act and its regulations. Thus, the degrees 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. Therefore, in view of the fact that the sixth respondent/Vinayaka Missions University is not authorised to conduct courses through distance education, the degree of M.Phil secured by the petitioner is invalid.

7. The learned Government Advocate further submits that in similar writ petitions filed in W.P.Nos.42675 to 42687 and 42689 of 2016 (***S.Sivan vs. The Regional Accounts Officer (Audit), Department of School Education, Coimbatore and others)*** before the Principal Seat of this Court, seeking to continue the incentive increment for M.Phil obtained through the distance education, this Court, vide order dated 06.09.2018, dismissed the writ petitions. The relevant portion of the order is extracted hereunder:

> "10. The learned counsel for petitioners states that though the incentive increment was granted based on the application submitted by the writ petitioners, there was no suppression of fact or otherwise on the part of the writ petitioners. Thus, imposing recovery will cause hardship to the writ petitioners. 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 the Hon'ble Supreme Court as well as the Government Order issued based on the Judgment of the 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 petitioners. In this view of the matter, this Court is of an opinion that the writ petitioners are not entitled for grant of any incentive increment for the qualification of M.Phil degree obtained by them from the 5th respondent/Vinayaka Missions University, which are 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 weeks from the date of receipt of a copy of this order."

8. This Court paid its anxious consideration to the rival submissions made and perused the materials placed on record.

9. The Government of Tamil Nadu, vide its G.O.(Ms).No.91, Higher Education (K2) Department, dated 03.04.2009, has taken a decision that M.Phil/Ph.D., courses should not be offered through distance education from the Academic Year 2007-2008 and they should be offered only in the regular stream. The Government has also declared that M.Phil and Ph.D. degrees obtained through correspondence/distance education/open university system are ineligible for government appointment as Lectures in Colleges/Universities, including Finance Colleges. Even before this Government Order, a decision was also taken by the Government in the Vice Chancellors' Meeting and necessary instructions were issued to all the Universities under agies of Higher Education Department that M.Phil/Ph.D. courses should not be offered through distance education from the Academic Year 2007-2008 and they should be offered only in the regular stream.

10. Further, similar writ petitions in W.P.Nos.42675 to 42687 and 42689 of 2016, were also dismissed by the Principal Seat of this Court, by holding that the writ petitioners are not entitled for any incentive increment for M.Phil degree obtained from the Vinayaka Mission University.

11. In this case, the petitioner was appointed as Post Graduate Teacher in the Government (Boys) Higher Secondary School, Natham, Dindigul District on 02.01.20213 and the incentive increment for M.Phil degree was given to the petitioner only from the year 2013. Since the petitioner obtained M.Phil degree from the sixth respondent/Vinayaka Missions University, which is not approved, she is ineligible to get incentive increment for M.Phil degree, as per G.O.(Ms).No.91, Higher Education (K2) Department, dated 03.04.2009 and the same has wrongly been given to the petitioner.

12. Any excess payment made due to mistake or wrong fixation of pay is liable to be recovered. The Honourable Apex Court, in the case of ***Chandi Prasad Uniyal and others vs. State of Uttarakhand and others***, reported in ***(2012) 8 SCC 417***, has held as follows:

> "14. We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer

and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."

13. Subsequently, in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer) and others***, reported in ***(2015) 4 SCC 334***, the Hon'ble Apex Court has held as follows:

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (for Group C and Group D Service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

14. Following orders of the Hon'ble Apex Court, the Government of Tamil Nadu, vide G.O.Ms.No.286, Finance (Pension) Department, dated 28th August 2018, has framed certain guidelines for recovery, which read as follows:

"4. In view of the law declared by the Courts, the Government directs that the Administrative Departments of Secretariat, Heads of Department and Head of Officers are advised to deal with the issue of wrongful / excess payments made to Government Servants / Pensioners / Family Pensioners in accordance with the decision of the Hon'ble Supreme Court in Civil Appeal No.11527 of 2014 (arising out of SLP (C) No.11684 of 2021) in State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc. as detailed below:

(i) In all cases where the excess payments on account of wrong pay / pension / family pension fixation, grant of scale without due approvals, promotions without following the procedure, or in excess of entitlements etc come to notice, immediate corrective action must be taken.

(ii) In a case like this where the authorities decide to rectify an incorrect order, a show-cause notice may be issued to the concerned employee / pensioner / family pensioner informing him / her of the decision to rectify the order which has resulted in the overpayment, and intention to recover such excess payments. Reasons for the decision should be clearly conveyed to enable the employee / pensioner / family pensioner to represent against the same. Speaking orders may thereafter be passed after consideration of the representations, if any, made by the employee / pensioner / family pensioner.

(iii) Whenever any excess payment has been made on account of fraud, misrepresentation, collusion, favouritism, negligence or carelessness, etc., roles of those responsible for overpayments in such cases and the employees / pensioners / family pensioners who benefitted from such actions should be identified, and departmental / criminal action should be considered in appropriate cases.

(iv) Recovery should be made in all cases of overpayment barring few exceptions of extreme hardships as detailed in para-3 above. No waiver of recovery may be allowed without the approval of Finance Department.

(v) While ordering recovery, all the circumstances of the case should be taken into account. In appropriate cases, the concerned employee may be allowed to refund the money in suitable installments with the approval of Secretary to Government in the Administrative Department of Secretariat, in consultation with the Finance Department.

(vi) Wherever the relevant rules provide for payment of interest on amounts retained by the employee beyond the stipulated period etc., interest would continue to be recovered from the employee as done hitherto.”

15. Therefore, the incentive increment paid to the petitioner for M.Phil degree, which she obtained through correspondence, is liable to be recovered as per G.O.Ms.No.286, Finance (Pension) Department, dated 28th August 2018. Accordingly, the writ petition is

dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1. The Secretary to Government,
   Fort St. George,
   Chennai - 9.

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3. The Regional Accounts Officer,
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6. The Assistant Controller of Examinations,
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   Salem.

+1 CC to M/s.R. SENTHILKUMAR, Advocate (SR-34503[F] dated 15/11/2021)

+1 CC to M/s.SPL GP (SR-34593[F] dated 16/11/2021)

W.P(MD)No.14073 of 2020
15.11.2021

MGJ(23.03.2022) 8P 9C