



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2022

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHIW.P.(MD)Nos.5540, 11978, 18000 of 2020& 13322, 20988 of 2021

and

W.M.P.(MD)Nos.4839 to 4841, 10324, 10325, 10599, 15019, 15020,
15021 of 2020& 433, 10307, 10309, 10310, 12797, 17587, 17590 of 2021

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P.Thangavani ... **Petitioner in WP(MD)No.5540 of 2020**
M. Selvanayagi ... **Petitioner in WP(MD). 11978 of 2020**
S. Kameswari ... **Petitioner in WP(MD). 18000 of 2020**
Seenithangam ... **Petitioner in WP(MD). 13322 of 2021**
V.Vennila ... **Petitioner in WP(MD). 20988 of 2021**

Vs.

1.The Director of School Education,
College Road,
Nungampakkam, Chennai - 6.

2.The Chief Educational Officer,
Theni District, Theni.

3.The District Educational Officer,
Uthamapalayam,
Theni District.

4.Kanakku Velayee Amaravathi
Ammal Girls' Hr. Sec. School,
Rep. by its Secretary,
Chinnamanur,
Theni District. ... **Respondents in WP(MD).5540 of 2020**

1.State Rep.By Its The Secretary to Government,
Fort St.George, Chennai-9

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

3.State Rep by Its The Chief Education Officer,
Dindigul Educational District, Dindigul.

4.The Head master Government High School,
Thirumalairayapuram, Dindigul Dist

5.The Assistant Controller Of Examinations,
Vinayaka Missions University, Salem.

... Respondents in WP(MD). 11978 of 2020



1.The Director of School Education, College Road, Nungambakkam, Chennai-6

2.The Chief Educational Officer
Theni Dist

3.The District Educational Officer,
Uthamapalayam, Theni Dist

4.Kanakku Velayee Amaravathiammal (Kva)
Girls Higher Secondary School,
Rep by its Secretary, Chinnamanur, Theni Dist

... Respondents in WP(MD). 18000 of 2020

1.Government of India
Rep by Deputy Educational Adviser,
Ministry of Human Resources Development,
Government of India, New India.

2. State of Tamil Nadu
Rep by its Principal Secretary,
Department of School Education,
Fort. St. George, Chennai - 9.

3.The Director of School Education,
O/o. the Director of School Education,
DPI Campus, Chennai - 6.

4.The Joint Director of School Education (Personnel),
O/o. the Joint Director of School Education (Personnel),
DPI Campus, Chennai - 6.

5.The Chief Educational Officer
O/o. the Chief Educational Officer,
Ramanathapuram,
Ramanathapuram District.

6.The District Educational Officer,
O/o. the District Educational Officer,
Paramakudi, Ramanathapuram District.

7.The Secretary Cum Correspondent,
Kshatriya Nadar Girls Higher Secondary School,
Kamuthi, Ramanathapuram District.

8.The Regional Accounts Officer (Audit),
School Education, Tallakulam, Madurai - 625 002.

... Respondents in WP(MD). 13322 of 2021



1. Government of India
Rep by Deputy Educational Adviser,
Ministry of Human Resources Development,
Government of India, New Delhi.
2. State of Tamil Nadu
Rep by its Principal Secretary,
Department of School Education,
Fort St. George, Chennai 9.
3. The Director of School Education,,
O/o. the Director of School Education,
DPI Campus, Chennai 6.
4. The Joint Director of School Education (Personnel),
O/o. the Joint Director of School Education, (Personnel),
DPI Campus, Chennai 6.
5. The Chief Educational Officer
O/o. the Chief Educational Officer,
Theni, Theni District
6. The District Educational Officer,
O/o. the District Educational Officer,
Periyakulam, Theni District
7. The Headmaster Government Higher Secondary School,
Theppampatti 625512, Theni District
8. The Regional Accounts Officer (Audit),,
School Education, Tallakulam, Madurai 625002.

... Respondents in WP(MD). 20988 of 2021

Prayer in WP(MD)No.5540 of 2020 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 4th respondent signed on 12.07.2019 and to quash the same and consequently, direct the respondents to remit back the amount which was already recovered from the petitioner's salary.

Prayer in WP(MD). 11978 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari of Calling for the records pertaining to letter of the 4th respondent in Na.Ka.No.97/A1/2019 dt.8.7.2020 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 5th respondent and quash the same as illegal and arbitrary and consequently direct the respondents to continue to pay the incentive



increment to the petitioner.

Prayer in WP(MD). 18000 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari Mandamus, call for the records of the impugned order passed by the 4th respondent in Na.Ka.NO.165-2019 dt.27.6.2019 signed on 12.7.2019 and quash the same and consequently directing the respondents to remit back the amount which already recovered from petitioners salary.

Prayer in WP(MD). 13322 of 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records pertaining to the impugned order dated 20.07.2021 on the file of 7th Respondent, and quash the same as illegal.

Prayer in WP(MD). 20988 of 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records pertaining to the Impugned Order in Na.Ka.No.62/2021 dated 13.11.2021 on the file of the Respondent NO.7 and quash the same.

For Petitioner : Mr.B.Vinothkumar
in WP(MD)Nos.5540 & 18000 of 2020

Mr.R.Senthilkumar
in WP(MD)No.11978 of 2020

Mr.T.Ashwin Rajasimman
for Mr.T.Lajapathi Roy
in WP(MD)Nos.13322 & 20988 of 2021

(*) For Respondents : Mr.J.Ashok,
Additional Government Pleader
for R.1 to R.3 in WP(MD)No.5540/2020,
for R1 to R4 in WP(MD)No.11978/2020
for R.1 to R.3 in WP(MD)No.18000 of 2020
for R.2 to R.6 in WP(MD)No.13322 of 2021 &
for R.2 to R.8 in WP(MD)No. 20988 of 2021

For Respondent 1 : Mr.V.Malaiyendran,
Central Government Standing Counsel,
(In W.P(MD)No.20988 of 2021)

For Respondent 1 : Mr.R.Senthil Kumar
Central Government Standing Counsel
(In W.P(MD)No.13322 of 2021)



For R4 : No Appearance in WP(MD)No.5540 & 18000,

For R5 : No Appearance in WP(MD)No.11978 of 2020

For R7 & R8: No Appearance in WP(MD)No.13322 of 2021

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COMMON ORDER

The petitioners before this Court are working as BT and PG Assistants and they have acquired M.Phil degree from Vinayaka Mission University. For this additional qualification of M.Phil degree, they submitted applications for grant of incentive increment and the same was also granted. While so, the Audit Department has raised an objection with regard to the grant of such incentive increments on the ground that the M.Phil degree obtained by the petitioners is not valid. Based on this objection, the Department has also initiated steps to stop the incentive increments and to recover the amount already paid. Aggrieved by such action, the petitioners have filed these writ petitions.

2.Learned Counsel appearing for the petitioners submitted that Vinayaga Mission University is a Deemed to be University under Section 3 of the University Grants Commission Act, 1956 and the Degree / Diploma awarded by the University is recognized by the Government for the purpose of employment. The Government of Tamil Nadu, vide G.O.Ms.No.91, Higher Education Department, dated 03.04.2009, declared that M.Phil and Ph.D degrees 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, vide G.O.Ms.No.39, Personnel and Administrative Reforms Department, dated 30.04.2014, amended this provision.

3.Learned Counsel appearing for the petitioners further submitted that the Registrar of Madras University, after this amendment, sent a letter dated 27.10.2010 to all the Principals of Arts and Science Colleges affiliated to University of Madras that M.Phil degree obtained by the candidates through correspondence / distance education / open university system prior to 03.04.2009 will be considered as eligible for employment and the M.Phil degree obtained through correspondence / distance education / open university system after 03.04.2009 will not be considered. Though the petitioners have obtained M.Phil degree before the cut-off date, without verifying the same, the impugned audit report came to be passed, followed by which, steps are being taken to stop the incentive increments and to recover the increments which were already granted.



4.Learned Additional Government Pleader appearing for the official respondents submitted 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, it is being granted for the acquisition of higher educational qualifications. The said concession is not a part and parcel of the regular scale of pay and pay rules. Such concession is applicable only to the teaching staff of Education Department and not for any other staff working in other departments of 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.

5.He further submitted that the Hon'ble Supreme Court has, time and again, reiterated that for securing public employment and for grant of concessions by the State Government, the degrees possessed by the candidates must be a valid one. The Government of Tamil Nadu has prohibited the Universities from offering M.Phil course through distance education from the Academic Year 2007-08, as on 29.08.2006. In this regard, the Government has passed G.O.Ms.No.91, Higher Education Department, dated 03.04.2009. The said decision of the Government still holds good. In the absence of establishing the validity of the degrees possessed by the candidates, they are neither entitled to get the public employment nor such other benefits granted by the Government.

6.Heard the learned Counsel appearing for the respective parties and perused the available materials.

7.A similar issue was raised before the Principal Seat of this Court in **WP.No.42675 of 2016, etc., batch**, in the case of **S.Sivan and Others v. Regional Accounts Officer (Audit), Department of School Education and Others**, wherein, this Court, in order to ascertain the validity of the M.Phil Degree awarded by Vinayaga Mission University, has impleaded the University Grants Commission. The University Grants Commission took a specific stand that the Deemed Universities declared under Section 3 of the UGC Act are not empowered to conduct any courses through distance education mode without their permission. The erstwhile Distance Education Council granted ex-post facto institutional recognition to the Deemed Universities for the programs offered by it through distance mode only upto the Academic Year 2005. After ascertaining the views of the University Grants Commission, the Court held that the M.Phil Degree awarded by Vinayaga Mission University is not valid and the incentive increments granted based on an invalid degree are liable to be recovered, as per G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018. The relevant portion from the said decision is extracted as follows:-



"10.The learned counsel for petitioners states 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.The Hon'ble Supreme Court, in the decision in **Chandi Prasad Uniyal and Others v. 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 a 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."

9. 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 Supreme 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."

10. Following the orders of the Hon'ble Supreme Court, the Government of Tamil Nadu, vide G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018, 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.

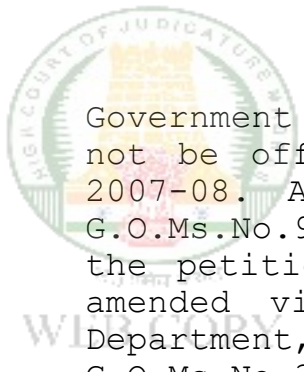
(iv) Recovery should be made in all cases of overpayment barring few exceptions of extreme hardships as detailed in para-3 above. No waiver of recovery may be allowed without the approval of Finance Department.

(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."

11. The University Grants Commission is the authority to regulate the courses conducted by various universities across the country. The University Grants Commission, in the aforesaid writ petition in **Sivan's** case (supra), has taken a stand that they have issued a Circular to the Vice Chancellors of all Deemed Universities in D.O.No.F6-7/2003 (CPP-I) dated 16.03.2004 to comply with the directions issued by them with regard to opening of study centres, academic centres and clarified that all the degrees awarded by the Deemed Universities in violation of instructions issued will be regarded as unspecified.

<https://www.mhc.trijudis> 12. In the Vice Chancellors' meeting held on 21.06.2006, the



Government has taken a decision that M.Phil / Ph.D course should not be offered through Distance Education from the academic year 2007-08. A Government Order in this regard was also passed in G.O.Ms.No.91, Higher Education Department, dated 03.04.2009. Though the petitioner claims that this Government Order was subsequently amended vide G.O.Ms.No.39, Personnel and Administrative Reforms Department, dated 30.04.2014, it is not so. The Government Order in G.O.Ms.No.39, Personnel and Administrative Reforms Department, dated 30.04.2014, pertains to the list of Universities and Institutions recognized by the University Grants Commission.

13. Therefore, following the aforesaid decision of this Court in **Sivan's** case (supra) and in view of the ratio laid down by the Hon'ble Supreme Court in the decisions in **Chandi Prasad Uniyal's** case (supra) and **Rafiq Masih's** case (supra), this Court, in **WP (MD) No.14073 of 2020**, in the case of **M.Anandhi v. State of Tamil Nadu**, has held that the incentive increment paid to the petitioner therein for M.Phil degree, which was obtained through correspondence after 21.06.2006, is liable to be recovered as per G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018.

14. Since the present batch of cases squarely fall within the above criteria, ie., the petitioners were also awarded with incentive increments for the M.Phil degree obtained through correspondence / open university / distance education after the Academic Year 2007-08, the incentive increment paid to them is liable to be recovered.

15. Accordingly, these writ petitions are dismissed. The official respondents are entitled to pass appropriate orders with regard to recovery, in the light of the Government Order in G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018. There shall be no order as to costs. Consequently, all the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

(*)Corrected as per the order of this Court in W.P.(MD)Nos.5540, 11978, 18000 of 2020 and 13322, 20988 of 2021 dated 09.01.2023

Sd/-

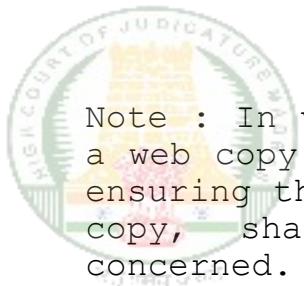
Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

gk



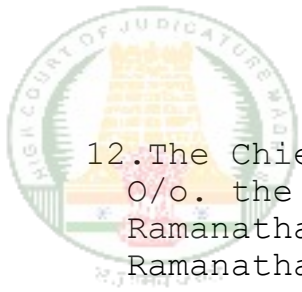
Note : In view of the present lock down owing to COVID-19, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

WEB COPY

To

(*) To be substituted to the order already despatched on 15/07/2022

- 1.The Director of School Education,
College Road,
Nungampakkam,
Chennai - 6.
- 2.The Chief Educational Officer,
Theni District, Theni.
- 3.The District Educational Officer,
Uthamapalayam,
Theni District.
- 4.The Secretary to Government,
Fort St.George, Chennai-9.
- 5.The Chief Education Officer,
Dindigul Educational District, Dindigul.
- 6.The Head master Government High School,
Thirumalairayapuram, Dindigul Dist
- 7.The Assistant Controller Of Examinations,
Vinayaka Missions University, Salem.
- 8.The Deputy Educational Adviser,
Government of India
Ministry of Human Resources Development,
Government of India, New Delhi.
- 9.The Principal Secretary,
State of Tamil Nadu
Department of School Education,
Fort. St. George, Chennai - 9.
- 10.The Director of School Education,
O/o. the Director of School Education,
DPI Campus, Chennai - 6.
- 11.The Joint Director of School Education (Personnel),
O/o. the Joint Director of School Education (Personnel),
DPI Campus, Chennai - 6.



12.The Chief Educational Officer
O/o. the Chief Educational Officer,
Ramanathapuram,
Ramanathapuram District.

13.The District Educational Officer,
O/o. the District Educational Officer,
Paramakudi, Ramanathapuram District.

14.The Regional Accounts Officer (Audit),
School Education, Tallakulam, Madurai - 625 002.

15.The District Educational Officer,
O/o. the District Educational Officer,
Periyakulam, Theni District.

16.The Headmaster Government Higher Secondary School,
Theppampatti 625512, Theni District.

+1cc to MR.M.SENTHILKUMAR,Advocate, SR.No.29900 DATED:05.07.2022

+2cc to MR.T.LAJAPATHI ROY,Advocate, SR.No.30005 & 30006
DATED:06.07.2022

W.P. (MD) Nos.5540, 11978, 18000 of 2020
& 13322, 20988 of 2021
05.07.2022

KG (CO)
GC (12.07.2022) 12P 20C
RD (27/02/2022) 12P 20C