IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **29.08.2023**

CORAM:

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.Nos.4229 of 2020
and
W.M.P.Nos.5002 & 5004 of 2020

T.Elangovan ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Personnel and Administrative Reforms(S) Department,
Secretariat,
Chennai-600 009.

2.The Regional Accounts Officer(Audit),
Department of School Education,
L.L.A Building 3rd Floor,
Big Bazzar Street, Town Hall,
Coimbatore-641 001.

3.The Chief Educational Officer,
Salem District,
Salem-636 001.

4.The District Educational Officer,
Sankari,
Salem District-637 301.

5.Vinayaka Missions University,
rep. by its Registrar,
NH-47, Sankari Main Road,
Ariyanoor,
Salem District-636 308. ... Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 3rd Respondent having Ref.No.Na.Ka.No.2585/A1/2018 dated 27-06-2018 and the consequential proceedings dated 27-01-2020 of the 3rd Respondent having Ref.No.Na.Ka.No.2585/A1/2018 seeking to recover the sum of Rs.3,59,497/- received by the Petitioner as 2nd incentive from 25-06-2009 onwards for acquiring M.Phil Degree from the 5th Respondent through distance mode based on the audit objection of the 2nd Respondent and quash the same and consequently direct the 4th Respondent to continue to pay the 2nd incentive to the Petitioner along with his salary for having acquired M.Phil from the 5th Respondent by Distance Mode along with the arrears.

For Petitioner : M/s.C.Uma

For Respondents : Mr.M.T.Cheziyan,
Additional Government Pleader

ORDER

The petitioner has filed this writ petition seeking to call for the records of the 3rd Respondent having Ref.No.Na.Ka.No.2585/A1/2018 dated 27-06-2018 and the consequential proceedings dated 27-01-2020 of the 3rd Respondent having Ref.No.Na.Ka.No.2585/A1/2018 seeking to recover the sum of Rs.3,59,497/- received by the Petitioner as 2nd incentive from 25-06-2009 onwards for acquiring M.Phil Degree from the 5th Respondent through distance mode based on the audit objection of the 2nd Respondent and quash the same and consequently direct the 4th Respondent to continue to pay the 2nd incentive to the Petitioner along with his salary for having acquired M.Phil from the 5th Respondent by Distance Mode along with the arrears.

2. The learned counsel for the petitioner submitted that the petitioner has completed B.Com, M.Com, M.Ed in the year 1999 and he was appointed as PG Teacher in Government Girls Higher Secondary School, Taramangalam, Salem District and the petitioner received first incentive for the M.Ed Degree with effect from 27.05.1999. The 5th respondent was recognised by the UGC as "Deemed to be University" by notification No.9-17/93-U3 dated 01.03.2001. By letter dated 28.02.2007 from IGNOU to the 5th respondent on the subject of recognition of faculty of Distance Education, 5th respondent it was stated that based on the recommendations made by the expert committee which visited the

University on 4th February, 2007 IGNOU granted recognition to the courses under offer by the Faculty of Distance Education of the University through distance mode for a period of 5 years with effect from the date of issue of this letter.

3. The learned counsel further submitted that during the academic year 2008-2009, the petitioner completed M.Phil by distant mode from the 5th respondent. On 11.07.2009 UGC (Minimum Standards and Procedure for awards of M.Phil/Ph.D Degree) Regulation, 2009 was issued. Regulation 3 of the 2009 Regulations states that Regulation will come into force from the date of their publication in the Gazette of India i.e. On 11.07.2009. As per Regulation 5 no University, deemed to be Universities and colleges/institutions of national importance shall be eligible for conducting M.Phil and Ph.D. programmes through Distance Education mode. Therefore, the said Regulations would have no applicability to the petitioner's case as he had completed the M.Phil. programme prior to 11.07.2009 or in any case had commenced the course prior to the coming into force the aforesaid Regulations. On 07.08.2016 the petitioner was promoted as Headmaster in Government Model Higher Secondary School,

Nangavalli, Salem District and the petitioner at present working in Government Higher Secondary School, Veerapandy, Salem District. Proceedings of the Headmaster, Government Boys Higher Secondary School, Attayampatti, Salem District having reference No.Na.Ka.No.717/2011 dated 11.11.2011 was issued to the petitioner, wherein it was stated that as per the Audit Department letter, the incentive granted to the Petitioner from 25.06.2009 to July, 2011 has been subjected to audit objection since the 5th respondent has not been recognised by the UGC and to recover Rs.37,482/- + allowances for the above period. The petitioner was asked to give his objections to the audit note before 30.11.2011. The petitioner was warned that if no reply is received the incentive granted for the M.Phil degree from 25.06.2009 till date will be remitted to the Government account and the grant of incentive will also be cancelled. The Headmaster had also enclosed the copy of the details of the audit objection. On 13.01.2012, the petitioner sent his reply addressed to the Headmaster. The petitioner stated that the 5th respondent was recognised by the UGC by notification No.9-17/93-U3 dated 01.03.2001 and the said recognition still exists. In these circumstances, the petitioner was shocked to receive the copy of the Proceedings of the Salem Chief Educational Officer, having reference No.2585/A1/2018 dated 13.02.2018 in connection with the audit objection to the grant of incentive for the M.Phil degree acquired by the petitioner and 3 others from the 5th respondent. The Proceedings read as follows:-

> ***"The 4 persons have acquired M.Phil degree from Vinayaka Missions University. Since the name of the said University is not found in the list of Universities recognised by the Tamil Nadu Government the grant of incentive is subjected to audit objection. The 4 Headmasters including the petitioner were directed to compute the incentive received and remit the amount to the Government treasury and sent the receipt before 15.03.2018 to the concerned Headmasters***"

16. As a follow up to the Proceedings of the 3rd respondent having reference No.2585/A1/2018 dated 03.02.2018 a further proceedings dated 27.06.2018 was issued by the 3rd respondent stating as follows:

> ***"The petitioner has been receiving incentive from 25.06.2009 onwards for having acquire M.Phil degree from Vinayaka Missions University.***
>
> ***The Coimbatore Regional Accounts Officer (Audit), Department of School Education has by his letter dated 05.12.2016 during audit has raised objections that the university which granted M.Phil degree does not figure in the list of universities recognised by the Tamil Nadu Government and hence the incentive granted is subject audit objections.***
>
> ***The petitioner is directed to remit the incentive receipt***

amounting to Rs.3,59,497/- to the Government Treasury and send the receipt.

The statement of Fixation of Pay under Tamil Nadu Revised Scales of Pay Rules, 2017 and the recovery statement of the petitioner from 25.06.2009 to 31.05.2018 are also enclosed."

4. The petitioner was aggrieved by the proceedings of the Salem, CEO having reference No.2585/A1/2018 dated 13.02.2018, 27.06.2018 and 27.01.2020 pursuant to which the incentive for M.Phil degree being paid to the petitioner was stopped and a sum amounting to Rs.3,59,497/- already paid as incentive was also sought to be recovered.

5. Further, in this context, the learned counsel for the petitioner relied upon the judgement of the Division Bench of this Court in Writ Appeal No.2328, etc., batch order dated 04.08.2023 wherein the division bench, in Para 25, 26 & 30 held thus:-

25. Therefore, insofar as these teachers are concerned, they joined in the course either in the year 2007 or in the year 2008 and they completed either in the year 2008 or 2009 respectively. Since the course is one year duration they joined in 2007 and completed in 2008 and those who joined in 2008 had completed in 2009.

26. These two academic years or calendar years, the University had been enjoying the institution recognition and there is no contra materials produced before this Court that these teachers had been admitted only in study centres beyond the main campus of the University and completed the course only in the study centres and not at the main campus, therefore, to that extent the stand taken by the University that all these courses especially the M.Phil degree course during the relevant years were conducted by the University only at the main campus have to be accepted.

30. Here, the fact remains that, insofar as the Vinayaka Mission's University is concerned, it has been given the recognition or approval by the DEC, IGNO by order dated 28.02.2007.

6. Counter affidavit dated 05.11.2020 has been filed by the third respondent and it is relevant to extract the following paragraphs:-

13. With regard to the averments made in Grounds (E) of the affidavit, it is humbly submitted that the Regional Accounts Officer (Audit), School Education Department has clearly mentioned that the petitioner had obtained the M.Phil degree offered by the Vinayaka Mission's University through Distance Education mode and the same has not been recognised by the Government vide Govt.Lr.No.268/Higher Education (K2)

Department dated 29.08.2006, G.O. No.91, Higher Education (K2) Department dated 03.04.2009, UGC (Minimum / Standards and Procedures 2009 (Gazette of India No.28 July 11, 2009 – July 17, 2009 Part III – Sec.4/4053) and proceedings of the Director of School Education Na.Ka.No.081477/K/E1/2014 dated 27.10.2014.

14. With regard to the averments made in Grounds (F) of the affidavit, it is humbly submitted that the Hon'ble High Court of Madras in W.P.No.21001 of 2018, dated 28.02.2019 held as follows: "26. So also the above said provision is very clear that the ascertainable Government dues includes "Over payment of Pay and Allowances". Accordingly, the First respondent is having the power to recover the "Over Payment". Further, the said excess payment was recovered, only at the time of giving the Pension benefits to the petitioner. Hence, it cannot be said that the recovery order was made after a long gap of time. More than that, as indicated by the Third respondent, in the Service Register maintained by the officer of the employer, pertaining to the petitioner, it was clearly held that the petitioner gave an undertaking in respect to the recovery of over payment. After, giving assurance for recovering the over payment, the petitioner filed the present Writ Petition and prayed for allowing the same, in order to waive the over payment, which was received nearly for the past 10 years. So also, the prayer sought for by the petitioner in this writ petition is not based on any sound legal

principle.

27. Accordingly, for the above said reasons, this Writ Petition stands dismissed. No costs.”

From the aforementioned extract of the judgment, it could be clearly seen that the respondents are having the power to recover the over payment awarded to the petitioner. Hence, the said recovery order issued to the petitioner is in tandem with relevant rules in force. All facts and circumstances of the instant case were taken into account at the time of issuing the said order.

7. Mr.T.Cheziyan, the learned Additional Government Pleader appearing for the respondents submitted that since the Vinayaka Mission's University is not a recognised University by the Government, the incentive for M.Phil degree being paid to the petitioner was stopped and the amount already paid as incentive was also sought to be recovered.

8. Heard both sides and perused the materials available on record.

9. In view of the above factual matrix of the case and the ratio laid down by the Division Bench of this Court in Writ Appeal No.2328 of 2018 etc., batch order dated 04.08.2023, this Court is of the considered view that the impugned

order in Na.Ka.No.2585/A1/2018 dated 27.06.2018 passed by the 3rd respondent is liable to be quashed and the same is hereby quashed.

10. In the result, the writ petition stands allowed and the 4th Respondent is directed to continue to pay the 2nd incentive to the Petitioner along with his salary for having acquired M.Phil from the 5th Respondent by Distance Mode along with the arrears. No costs. Consequently connected miscellaneous petitions are also closed.

29.08.2023

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Index : Yes/No
Speaking Order: Yes/No

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J. SATHYA NARAYANA PRASAD, J.

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