



W.P.No.4241 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.Nos.4241 of 2020

and

W.M.P.Nos.5009 & 5013 of 2020

S. Mohan

... 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 Bazaar 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,



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NH-47, Sankari Main Road,
Ariyanoor,
Salem District-636 308.

6. The Headmaster
Government High School,
Perumampatty,
Salem District 636 307.

... 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 letter of the 2nd respondent having Ref.No.Na.Ka.No.582/E10/2018 dated 2018 addressed to the 6th respondent seeking to recover the incentive of Rs.540/- per month received by the petitioner as 2nd incentive from 18.01.2013 onwards for acquiring M.Phil degree from the 5th respondent through Distance Mode and quash the same and consequently direct the 6th Respondent to continue to pay the 2nd incentive of Rs.540/- per month to the Petitioner along with his salary for having acquired M.Phil degree from the 5th Respondent.

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 letter of the 2nd respondent having Ref.No.Na.Ka.No.582/E10/2018 dated 2018 addressed to the 6th respondent seeking to recover the incentive of Rs.540/-



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per month received by the petitioner as 2nd incentive from 18.01.2013 onwards for acquiring M.Phil degree from the 5th respondent through Distance Mode and quash the same and consequently direct the 6th Respondent to continue to pay the 2nd incentive of Rs.540/- per month to the Petitioner along with his salary for having acquired M.Phil degree from the 5th Respondent.

2. The learned counsel for the petitioner submitted that the petitioner has completed B.Sc., in Salem Government Arts College, Salem in the year 1987 and passed B.E., in Annamalai University, Chidambaram, Cuddalore district in the year 1992 and also passed M.A. in University of Madras Distance Education, Madras in the year 1996. The Government of India, Ministry of Human Resource Development (Department of Education) issued Notification (44) dated 01.03.1995 stating that all qualification awarded by “Deemed to be Universities” stand automatically recognised for the purpose of employment to posts provided they are approved by Distance Education Council. The 5th respondent was recognised by the UGC as “Deemed to be University” by notification No.9-17/93-U-3 dated 01.03.2001. Between 2008-2009 the petitioner passed M.Phil through Distance Mode from the 5th respondent and was appointed as



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BT.Assistant, Government High School, Vedukathampatty, Salem on 31.12.2008

and received 1st incentive for M.A. Degree. He also passed M.Sc in Alagappa University, Karaikudi, Sivagangai district in the year 2011 and received 2nd incentive for M.Phil degree as per proceedings No.18 with effect from 18.01.2013. In the year 2015, the petitioner was transferred as BT Assistant, Government High School, Perumampatty, Salem. In 2018 Audit Objections by the 2nd respondent addressed to the Headmaster, Government High School, Perumampatty, Salem after audit of the accounts for the period 2016-17 and 2017-18 of the Government High School, Perumampatti, Salem. In the audit report it was pointed out that M.Phil degree acquired by the petitioner through Distance mode is ineligible for incentive. 2nd incentive granted to the petitioner on the ground M.Phil from the 5th respondent is irregular.

3. The learned counsel for the petitioner further submitted that after referring to the letter of the Government dated 29.08.2006, Government order No.91 dated 03.04.2009, UGC Regulations 2009 dated 01.06.2009, the proceedings of the Director of School Education dated 27.10.2014, UGC Regulation 2016 and UGC notification dated 05.05.2016 and UGC letter dated



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05.03.2015 it was stated that as per the above documents since the Distance mode of Education for M.Phil from Vinayaka Missions University is not recognised by the Government of Tamil Nadu, it is not possible to give incentive for an unrecognised course. Hence the incentive received from 18.01.2013 onwards and other benefits are refused by audit. In the decision of the Madras High Court in W.P.No.42675 to 42689 of 2016 dated 06.09.2018 it was ordered that the incentive for M.Phil from Vinayaka Missions University should be recovered. The loss on this account has to be recovered and steps should be taken to recover the loss.

4. 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.



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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.

5. 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 (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.

6. Mr.T.Cheziyan, the learned Additional Government Pleader appearing



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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.

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

8. 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 Nos.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 27.01.2020 passed by the 3rd respondent is liable to be quashed and the same is hereby quashed.

9. In the result, the writ petition stands allowed and the 6th Respondent is directed to continue to pay the 2nd incentive to the Petitioner along with his salary for having acquired M.Phil degree from the 5th Respondent by Distance Mode along with the arrears. No costs. Consequently connected miscellaneous petitions are also closed.



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Index : Yes/No

Speaking Order: Yes/No

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J. SATHYA NARAYANA PRASAD, J.

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