



W.P.No.22645 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.No.22645 of 2023

and

W.M.P.No.22093 of 2023

K.Sumithra

... Petitioner

Vs.

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

2.The Chief Educational Officer,
Krishnagiri District,
Krishnagiri – 635 001.

3.The District Educational Officer,
Krishnagiri District,
Krishnagiri – 635 001.

4.The Headmaster,
Government High School,
Pothinayanapalli,
Krishnagiri Taluk,
Krishnagiri District – 635 002.

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

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in Proceedings having Ref. No. Na.Ka. No.2648 /E2/ 2019, dated May 2019 and signed on 10.01.2020 raising audit objection to the grant of 2nd incentive to the petitioner who is working as B.T.Assistant in the Government Middle School, Pothinayanapalli, Krishnagiri Union, Krishnagiri for the M.Phil Degree obtained from the 5th Respondent University through distance mode and ordering recovery of the 2nd incentive granted to the Petitioner 18.01.2013 from the salary of the Petitioner and quash the same as arbitrary and consequently direct the 4th Respondent to continue to pay the 2nd incentive amount to the Petitioner for having acquired M.Phil Degree through Distance Mode from the 5th Respondent University along with Petitioner's salary.

For Petitioner : M/s.Nalini Chidambaram
Senior Counsel
for M/s.C.Uma

For R1 to R4 : Mr.P.Baladhandayutham
Special Government Pleader

ORDER

This writ petition has been filed challenging the order of the 1st respondent signed on 10.01.2020, raising Audit Objection to the grant of second incentive to the petitioner for passing M.Phil Degree obtained from the 5th respondent University through Distance Mode and seeking recovery



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of the second incentive already granted to the petitioner.

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2.The petitioner states that she is working as B.T.Assistant in the 4th respondent School and she has completed M.Phil Degree from the 5th respondent/Vinayaga Missions University, through Distance Mode. It is the case of the petitioner that the petitioner was granted second incentive for passing the M.Phil Degree with effect from 17.01.2013 and she had been receiving the same continuously along with her salary. While so, the 1st respondent has passed the impugned order raising Audit Objection to the grant of second incentive to the petitioner on the ground that the M.Phil Degree obtained from the 5th respondent University is not proper and that the second incentive already granted to the petitioner should be recovered and remitted to the Treasury. Challenging the same, the present writ petition has been filed.

3.Heard the learned Senior Counsel appearing for the petitioner and Mr.P.Baladhandayutham, learned Special Government Pleader, who takes notice for the respondents 1 to 4.



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4.The impugned order mainly proceeds on the ground that the petitioner is not entitled to grant of incentive, since she has obtained her M.Phil Degree through Distance Education Mode from the 5th respondent/Vinayaga Missions University, which is a Deemed University. This Audit Objection has been raised based on G.O.(Ms) No.91, Higher Education (K2) Department, dated 03.04.2009. Consequently, recovery of incentive already granted to the petitioner is also sought to be made.

5.This issue is no longer *res integra*. A similar issue involving the same 5th respondent University with regard to an Audit Objection, was earlier dealt with by the Division Bench of this Court elaborately in a batch of Writ Appeals in ***W.A.Nos.2328 of 2018, etc. batch [S.Sivan v. The Regional Accounts Officer (Audit), Department of School Education, Coimbatore and others]***, wherein, the Division Bench, by judgment dated 04.08.2023, has held as follows :

“17.Mr.B.Rabu Manohar, learned Standing Counsel appearing for the UGC, on instructions would submit that, initially the DEC, IGNO was the authority to grant approval or recognition to deemed to be Universities or any other University to conduct Distance Education



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programs. Subsequently, that has been taken at the hands of the University Grant Commission i.e., UGC.

18.He would also submit that, so far as the relevant period of time since it was in the realm of DEC, IGNO, the order passed by the IGNO dated 28.02.2007 granting such recognition/approval to the Vinayaka Missions University to run the Distance Education Courses for five years period is institution based approval or recognition.

...

23.In this context, it is to be noted that the stand of the UGC counsel was that, insofar as the approval that has been given by the DEC, IGNO in respect of the University or deemed to be University are concerned to have such Distance Education Course only at the head quarters and not beyond which, which means, the study centres that had been run by various Universities like the present University were not approved or recognized by the UGC.

24.During the relevant period i.e., from 2007 to 2012, the University was given institution wise recognition as stated by the learned counsel appearing for the UGC and from 2011 - 2012 , 2013-2014, the program wise recognition was given by the UGC.



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.

...

32. This position, even though had been projected, the learned single Judge has rejected the writ petitions, where the learned Judge has considered the counter affidavit filed by the Government as well as the deemed to be University and ultimately concluded that these teachers are not entitled to get the advance incentive increment as allowed to them earlier in view of the stand taken by the Government that they are not entitled to get such incentive increment because the degree obtained by them through Distance Education Mode of the Vinayaka Missions University cannot be an approved or recognized or accepted.”

6. On a reading of the above judgment, it is seen that the Division Bench has clearly held that G.O.Ms.No.91, dated 03.04.2009, issued by the Higher Education Department, does not deal with anything about the allowing of advance incentive increment to the teachers, who



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acquired higher qualification, since the said Government Order is only applicable for Government appointments.

7.In the light of the judgment of the Division Bench of this Court cited *supra*, when the petitioner has obtained her M.Phil Degree from the 5th respondent/Vinayaga Missions University during the relevant point of time, i.e., 2007 to 2009, the time during which the University had approval and recognition as per the said judgment of the Division Bench, the impugned order passed by the 1st respondent raising Audit Objection to the grant of second incentive to the petitioner based on G.O.(Ms) No.91, Higher Education (K2) Department, dated 03.04.2009, and also seeking consequential recovery of incentive already granted to the petitioner, cannot be sustained and therefore, the impugned order stands quashed.

8.As a sequel, this writ petition is allowed. No costs.
Consequently, connected miscellaneous petition is closed.

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Internet : Yes

Index : Yes / No

Neutral citation : Yes / No

Speaking order / Nonspeaking order

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To
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