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Writ Appeal Nos.2328 of 2018 & etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.08.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal Nos.2328, 2290, 2289, 2294, 2353, 2347, 2349, 2287,
2288, 2292, 2345, 2343, 2344, 2291, 2725, 2802, 2293, 2334, 2339,
2495, 2493, 2494, 2335 and 2336 of 2018**

and

**C.M.P.Nos.22421, 18299, 18301, 18315, 18676, 18666, 18661, 18607,
18597, 18601, 18318, 18316, 18320, 18308, 18312, 23258, 18551,
18564, 18530, 20237, 20238, 20233, 18554 and 18555 of 2018**

W.A.No.2328 of 2018

S.Sivan

... Appellant

Vs

1. The Regional Accounts Officer,
(Audit), Department of School Education,
Coimbatore – 641 001.
2. The Director,
Directorate of School Education,
Chennai – 600 006.
3. The District Educational Officer,
Dharmapuri, Dharmapuri District.
4. The Headmaster,
Government Higher Secondary School,
Bairnatham 636 905,
Dharmapuri District.



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5. The Registrar,
Vinayaka Missions University,
Salem – 636 308.

6. The Secretary,
University Grants Commission,
New Delhi – 110 002.

.. Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed in W.P.No.42675 of 2016 dated 06.09.2018 and allow the writ appeal.

Appearance

**W.A.Nos.2328, 2725, 2802, 2334, 2339, 2495, 2493, 2494, 2335
and 2336 of 2018**

For Appellants	: Mrs.Nalini Chidambaram, Senior Counsel for Mr.N.Umapathi
For Respondents	: Mr.K.V.Sajeev Kumar Special Government Pleader [R1 to R4] : Mr.N.Suryanarayanan for Mr.Rahul Balaji [R5] Mr.B.Rabu Manohar [R6]

Appearance

**W.A.Nos.2299, 2289, 2294, 2353, 2347, 2349, 2287, 2288, 2292, 2345,
2343, 2344, 2291 and 2293 of 2018**

For Appellants	: Mr.N.Surya Narayanan for Mr.Rahul Balaji
For Respondents	: Mr.K.V.Sajeev Kumar Special Government Pleader [R2 to R5]



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- : Mr.B.Rabu Manohar [R6]
- : No appearance R1 in
W.A.Nos.2290, 2289, 2294,
2347, 2349, 2287, 2288, 2292,
2343, 2344, 2293 of 2018
- : Not ready in notice for R1 in
W.A.Nos.2353, 2345 and 2291 of
2018

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

Since the issue raised in these batch of writ appeals arising out of a common order passed by the Writ Court in W.P.No.42675 of 2016 & etc., batch dated 06.09.2018 in the matter of ***Mr.S.Sivan Vs. The Regional Accounts Officer (Audit)***, with the consent of learned counsel appearing for the parties, all these writ appeals were heard together and are disposed of by this common judgment.

2. The appellants in the appeals filed by the private persons i.e., W.A.Nos.2328, 2725, 2802, 2334, 2339, 2495, 2493, 2494, 2335 and 2336 of 2018 were working as teachers at various schools under the respondent Department. During their employment in order to qualify themselves further, they joined in the M.Phil degree course at Vinayaka



Missions University during the year 2007 and 2008 and complete the said course in the year 2008 and 2009 as the said course's duration is one year.

3. As per the Rule, which was in vogue, whoever working as a Teacher, who earned any higher qualification or additional qualification, for which additional incentive increment would be allowed by the respondent State Government /Department.

4. In this context, it is to be noted that, such kind of additional incentive increment at the maximum of two alone, a teacher would be entitled to.

5. These teachers since acquired the said qualification of M.Phil as an additional qualification, they sought for such additional incentive increment, which was considered and granted by the Department.

6. After some time, when internal audit was taken place, the audit team having found that these teachers were given such incentive increments, there had been an objection raised by the audit team through



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order dated 03.10.2012, which had been directly addressed to the Head Master of the school concerned, where these Teachers were working.

7. The main reason for such objection raised by the audit team was that, all these Teachers uniformly had joined in the course either in the year 2007 or in the year 2008 i.e, M.Phil degree offered by the Vinayaka Missions University at Salem, which is a deemed to be University under Section 3 of the University Grant Commissions Act, 1956.

8. Insofar as the said Vinayaka Missions University is concerned, as it was a deemed to be University, therefore, the Distance Education Course conducted by them under the Distance Education Mode whether was approved by the Distance Education Council, which was part of the Indira Gandhi National Open University [in short, 'IGNO'] at that time and if they did not get any such approval from DEC, IGNO, then the degree secured by these teachers i.e., M.Phil degree from such University cannot be an approved degree and those degrees cannot be accepted as a valid degree for the purpose of awarding any advance incentive increment.



9. This was the objection raised by the audit team through the order dated 03.10.2012. As a result of which, since the teachers were facing the recovery from the Department and also the advance incentive increment already granted been stopped, they approached the Writ Court filed separate writ petitions with a prayer seeking for a writ of certiorari to call for the records of the said order passed by the audit team and to quash the same.

10. Those writ petitions were heard together and were disposed of by a common order passed by the learned single Judge vide order dated 06.09.2018, where all these writ petitions were dismissed.

11. Aggrieved over the said orders passed by the Writ Court dated 06.09.2018, a set of writ appeals have been filed by the teachers and another set of writ appeals have been filed by the said University viz., Vinayaka Missions University that is how these batch of writ appeals have come up before us.

12. Mrs.Nalini Chidambaram, learned Senior Counsel appearing for the appellants, who are the teachers, submits that, insofar as the doubt



raised by the audit team in the impugned order as to whether the University had obtained such approval from the concerned authorities to run the Distance Education Course, the learned Senior Counsel has pointed that, the Government of India issued a notification, which has been published in the Gazette of India dated 08.04.1995, which reads thus:

“The 1st March 1995 No.44, F.No.18-15/93-TD.V/TS.IV- On the recommendations of the Board of Assessment for Educational Qualifications, the Government of India has decided that all the qualifications awarded through Distance Educations by the Universities established by an Act of Parliament or State Legislature, Institutions Deemed to be Universities under Section 3 of the UGC Act, 1956 and Institutions of National Importance declared under an Act of Parliament stand automatically recognized for the purpose of employment to posts and services under the Central Government, provided it has been approved by Distance Education Council, Indira Gandhi National Open University, K 76, Hauz Khas, New Delhi – 110 016 and wherever necessary by All India Council for Technical Education, I.G. Sports Complex, I.P.Estate, New Delhi – 110 002.”



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13. The learned Senior Counsel also relied upon further notification issued by Government of India dated 19.08.2004, which reads thus:

“In exercise of the powers conferred by Section 3 of the University Grants Commission 1956, the Central Government of the advice of the University Grants Commission, to declare that the following institutions are included under the ambit of Vinayaka Mission's Research Foundation, Salem (Tamil Nadu), a Deemed to be University for the... of the aforesaid Act with immediate effect.

- 1. Vinayaka Mission's Kirupananda Variyar Engineering College, Salem.*
- 2. Vinayaka Mission's College of Physiotherapy, Salem.*
- 3. Vinayaka Mission's Kirupananda Variya Arts and Science College, Salem.*
- 4. Vinayaka Mission's College of Pharmacy, Salem.*
- 5. Aarupadai Veedu Institute of Technology, Paiyanoor, Kanchipuram.”*

14. Therefore, the Vinayaka Missions University part of the Vinayaka Mission's Research Foundation, Salem, was considered to be deemed to be University and such approval given by the UGC has been made clear in these proceedings.



15. The learned Senior Counsel also point out that, by order dated

28.02.2007, the IGNO has passed the following order:

“This has reference to your letter No.VMRF/SEC/FDE/2006 dated 30th November, 2006 regarding approval of programmes offered through distance mode by Faculty of Distance Education, Vinayaka Mission's University. I am pleased to inform you that the Hon'ble Chairman, Distance Education Council, based on the recommendations made by the Expert Committee which visited the university on 4th February, 2007, has granted recognition to the courses under offer by Faculty of Distance Education of your University through the distance mode for a period of 5 years w.e.f the date of issue of this letter.”

16. Relying upon these orders, the learned Senior Counsel would contend that, from 2007 to 2012, for five years period approval or recognition has been granted by the DEC, IGNO to the Vinayaka Missions University to conduct courses in the Distance Education Mode. One of such course in the Distance education mode during the relevant year i.e., 2007-2008 and 2008-2009 is M.Phil degree, where these teachers had joined and successfully completed the course. Therefore, the learned Senior Counsel would contend that, during the relevant year,



where these teachers joined in the M.Phil degree in the University and completed the same successfully, was the period covering under the order dated 28.02.2007, under which, the DEC, IGNO has granted such approval/recognition to the said University to conduct course for the period of five years. Therefore, it was contended by the learned Senior Counsel that, the doubt that has arisen in the mind of the audit team, which has been shown as one of the reason that the teachers obtained the degree of M.Phil from Vinayaka Missions University cannot be a valid degree, therefore, based on which, the incentive increment already been ordered in their favour has been stopped and the amount proposed to be recovered cannot have any legal backing in view of the aforesaid proceedings. Therefore, the learned Senior Counsel seeks indulgence of this Court against the order impugned passed by the learned Judge dated 06.09.2018.

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 programs. Subsequently, that has been taken at the hands of the University Grant



Commission i.e., UGC.

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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.

19. He would also submit that after some point of time, the UGC changed the pattern of giving such recognition or approval on course basis and not on institution basis alone.

20. The arguments advanced by the learned Senior Counsel appearing for the appellants, who are the Teachers as stated supra is adopted by Mr.N.Surya Narayanan, learned Counsel appearing for the University, who also filed the remaining writ appeals.

21. He would further add that insofar as the running of the courses under Distance Education Mode especially during the relevant point of time is concerned, the University since did not get any approval for any study centres, students admissions were given and the study materials



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were supplied only by the University and the seminar classes were conducted by the University, at it's main campus ultimately they had written the examination only at the University campus i.e., Head quarters.

22. We have considered the said submissions of the learned counsel on either side.

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.



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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.

27. If we look at the impugned order, which was challenged before the Writ Court is concerned, the audit team has raised the objection to the following effect:

"1) திரு.க.சிவன், முதகலை ஆசிரியர்

இவர் எம்.பில் உயர்கல்வி பெற்றமைக்கு



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30.12.09 முதல் ஒரு ஊக்க ஊதிய உயர்வு ரூ.530+530 திருமல்வாடி அ.மே.நி.பள்ளி தலைமை ஆசிரியரது ஆணை எண்.09/அ1/10 நாள். 20.12.10ன் படி அனுமதிக்கப்பட்டு அடிப்படை ஊதியம் ரூ.17670 லிருந்து ரூ.18730/-க்கு உயர்த்தப்பட்டுள்ளது. இவர் எம்.பில் உயர்கல்வியை சேலம் விநாயக மிஷன் தன்னாட்சி பல்கலைக்கழகத்தில் அஞ்சல் வழியில் பயின்றுள்ளார். இப்பல்கலைக்கழகம் அஞ்சல் வழியில் உயர்கல்வி வழங்க புதுடில்லி அஞ்சல் வழிக்கல்வி ஆணையத்தால் அங்கீகரிக்கப்பட்ட ஆணை தணிகைக்கு முன்னிலைபடுத்தப்பட வேண்டும்.

இயலாத நிலையில் அனுமதிக்கப்பட்ட ஊக்க ஊதியம் இரத்து செய்யப்பட வேண்டும். கிகையாக வழங்கப்பட்ட ரூ.30808 + படிகள் அரசுக் கணக்கில் திரும்ப செலுத்தப்பட வேண்டும்."

28. The audit team has stated that, the teachers concerned has been given the advanced incentive increment for having acquired the M.Phil higher qualification but whether the teacher has completed the said course and acquired the qualification in Vinayaka Missions University, if so, whether the said University was recognized or approved by the DEC, New Delhi and if so, the said order should be produced before the audit team and if no such order is produced then the Department has to cancel the advanced incentive increment allowed to these teachers.



29. Therefore, it was a condition imposed by the audit team that, if the DEC's order recognizing or approving the University viz., Vinayaka Missions University to conduct Distance Education Courses is made available, the advance incentive increment given to the teachers need not be interfered, provided if no such orders are produced, it should be cancelled.

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.

31. When that being so, even according to the audit team, since these teachers are entitled to get their advance incentive increment as their increment has been ordered already and was enjoyed by them it need not be stopped or cancelled.

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



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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.

33. In this context, the learned Government Pleader appearing for the State has relied upon the G.O.Ms.No.91, Higher Education Department, dated 03.04.2009 and has stated that the Government by the said G.O, declared that the M.Phil and Ph.D degree obtained through the correspondence or Distance Education or Open University system are ineligible for Government appointments and appointment as lecturers in colleges or Universities including self-financing colleges, therefore the import of the said G.O.Ms.No.91, dated 03.04.2009 if it is implemented that will stand in the way for extending the benefit of advance incentive increment to the teachers.

34. However, the said submission made by the learned Government Pleader is liable to be rejected because, the said G.O has only mentioned about the eligibility for a person to get employment. Here, the teachers, as



per earlier qualification acquired already, been appointed as teachers or lecturers and the benefit now questioned is only the grant of advance incentive increment for having acquired the higher qualification. Therefore, the 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 acquired higher qualification, therefore, that argument made by the learned Government Pleader also is to be rejected and accordingly, it is rejected.

35. In the result, the following orders are passed in these writ appeals:

- ◆ That the impugned order passed by the writ Court dated 06.09.2018 is set aside. As a sequel, the impugned order that was challenged before the Writ Court in the respective petitions is also set aside to the extent that those teachers who had studied in the Vinayaka Mission's University during the relevant point of time i.e., 2007 to 2009 since had acquired the qualification during the period which the University also enjoyed the approval or recognition from the DEC, IGNO, the said objection raised by the audit Department would not be sustained. Therefore, on that



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ground, the incentive increment already allowed to these teachers need not be disturbed. If the increment already been allowed to these teachers have been cancelled or stopped by virtue of the order, which is impugned herein, the same shall be restored and the arrears to that effect shall be calculated and be paid to the teachers/appellants. To that extent, all these writ appeals are allowed. No costs. Connected miscellaneous petitions are closed.

(R.S.K.,J.)

(K.B., J.)

04.08.2023

Index: Yes

Speaking Order

Neutral Citation: Yes

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Note: Order copy to be uploaded by 09.08.2023

To

1. The Regional Accounts Officer,
(Audit), Department of School Education,
Coimbatore – 641 001.
2. The Director,
Directorate of School Education,
Chennai – 600 006.
3. The District Educational Officer,



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