



W.P.(MD).No.19670 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.19670 of 2023

and

W.M.P(MD)Nos.16250 & 16253 of 2023

A.Nagajothi

... Petitioner

Vs.

- 1.The State represented by its
The Secretary to Government,
Fort St. George,
Chennai-9.
- 2.The State represented by its
The Director of School Education,
College Road,
Chennai-6.
- 3.The Regional Accounts Officer,
Office of the Regional Accounts Office (Audit),
School Education Department,
Madurai-625 002.
- 4.The State represented by its
The Chief Education Officer,
Dindigul Educational District,
Dindigul.



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5.The Head Master,
Government Higher Secondary School,
Athoor-624 701,
Dindigul District.

6.The Assistant Controller of Examinations,
Vinayaka Missions University,
Salem.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to communication issued by the fifth respondent in letter No.Na.Ka.No.55/23, dated 24.07.2023 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 sixth respondent and quash the same as illegal and arbitrary and consequently direct the respondents to continue to pay the incentive increment to the petitioner.

For Petitioner : Mr.V.Muthumani

For R-1 to R-5 : Mr.V.Om Prakash
Government Advocate

For R-6 : Mr.S.Anwar Sameem

ORDER

The present writ petition has been filed challenging the show cause notice issued by the fifth respondent herein on 24.07.2023 calling for an explanation why the incentive increment granted to the writ petitioner on the



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basis of her obtaining M.Phil., degree from the sixth respondent herein should not be recalled.

2. According to the writ petitioner, she joined as a B.T Assistant on 16.09.2005 at Government High School, Mettuthirukampuliyur, Karur District and her services were regularised on 01.06.2006. At the time of joining service, the petitioner had completed M.Sc., (Geography) and B.Ed., (Geography) degree. She completed M.Phil., (Geography) in February, 2011 from the sixth respondent University. Based upon her higher qualifications, an incentive increment was granted to her. Now, the present impugned show cause notice has been issued on the ground that the said M.Phil., degree obtained through distance education is not valid in the eye of law and why the said incentive increment should not be recalled and recovered from the writ petitioner.

3. The petitioner had brought to the notice of the Court, a judgment of the Hon'ble Division Bench of this Court in a batch of writ appeals in ***W.A.Nos. 2328 of 2018 etc., (S.Sivan Vs. The Regional Accounts Officer and Others)*** dated 04.08.2023, wherein this Court in paragraph No.24 had pointed out that for the period between 2007 and 2012, the University Grants Commission has



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granted recognition to the sixth respondent University for conducting M.Phil., courses through distance education. Based upon the said fact, the Hon'ble Division Bench of this Court was pleased to allow the writ appeals filed by the concerned Teachers and directed the authorities to confer with the incentive increment.

4. Per contra, the learned Government Advocate appearing for the official respondents pointed out that under G.O(Ms)No.91, Higher Education (K2) Department, dated 03.04.2009, a direction has been issued by the Higher Education Department that, M.Phil / Ph.D courses should not be offered through distance education from the academic year 2007 - 2008 and they should be offered only in the regular stream. Therefore, in view of the said Government order, the show cause notice is sustainable.

5. Heard the submissions made on either side and perused the materials available on record.

6. There is no dispute that the petitioner had joined M.Phil course in the year 2008 and completed the same in the year 2011 in the sixth respondent



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University through distance education. The Hon'ble Division Bench of this Court in W.A.Nos.2328 of 2018, dated 04.08.2023 had an occasion to consider G.O(Ms)No.91, dated 03.04.2009. In paragraph Nos.33 and 34 of the said judgment, the Hon'ble Division Bench of this Court has held that the bar under G.O(Ms)No.91 will apply only for the entry level post and it would not be a bar for conferment of incentive increment.

7. In view of the above said facts, the impugned show cause notice is not legally sustainable and the same is liable to be set aside. The incentive increment already granted to the writ petitioner shall be continued.

8. With the above said observation, this writ petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

16.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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R.VIJAYAKUMAR, J.

BTR

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