



W.P.(MD).No.27596 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.27596 of 2023

R.Gunasekaran

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by Secretary to Government,
School Education Department,
Fort St.George,
Chennai – 09.
2. 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 District Educational Officer,
Government Model Higher Secondary School Campus,
Allinagaram, Theni – 625 531.
5. The Headmaster,
Sri Varadhavenkataramana Higher Secondary School,
Venkatachapuram Post,
Theni District – 625 534.



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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 Mandamus, directing the respondents to refund the withheld incentive increment of Rs.7,26,651/- and continue to pay the incentive increment for the petitioner's M.Phil., Degree within the time limit stipulated by this Court.

For Petitioner	: Mr.R.Saravanan
For Respondents	: Mr.N.GA.Natraj Government Advocate For R1 to R4

ORDER

The present Writ Petition has been filed by a Vocational Teacher in the fifth respondent School seeking a mandamus directing the respondents to refund the incentive increment of Rs.7,26,651/- (Rupees Seven Lakhs Twenty Six Thousand Six Hundred and Fifty One only) which was withheld by the Department and for a direction to continue to pay the incentive increments, based upon his M.Phil., Degree.



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2. According to the writ petitioner, he had joined M.Phil (Commerce) in the year 2007 in the sixth respondent University and he has successfully passed out in the year 2008. Based upon the higher qualification, incentive increment was granted. However, by way of an order, dated 13.09.2023, the incentive increments paid to the writ petitioner was withheld from the DCRG on the ground that the petitioner passed out M.Phil Degree from an un-recognized University. Hence, the present writ petition has been filed.

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 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.



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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 2007 and completed the same in the year 2008 in the sixth respondent 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.



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7. In view of the above said facts, the respondents are directed to refund the incentive increment that was retained by them.

8. With the above said observations, this Writ Petition stands allowed.

There shall be no order as to costs.

21.11.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

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2. The Director of School Education,
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