



W.P.(MD).No.28041 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.28041 of 2023

A.Vijayalaksmi

Vs.

... Petitioner

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, (Secondary)
Office of the District Educational Office,
Theni District.
5. The Headmaster,
Nadar Saraswathi Girls Higher Secondary School,
Theni District – 625 531.



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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.7,43,652/- 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 R5

ORDER

The present Writ Petition has been filed by the petitioner who is a retired Headmistress of Aided School seeking a mandamus to direct the respondents to refund the withheld incentive amount on the ground that the said incentive was granted on the basis of unapproved M.Phil Degree.

2. The petitioner herein admittedly underwent M.Phil Course in the sixth respondent University only 2007 – 2008. Based upon the said qualification, she was conferred with incentive increment. However, the



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same was later recovered on the ground that the M.Phil Degree conferred by the sixth respondent University has not been approved by the UGC. Now, the petitioner seeks a mandamus to refund the recovered amount on the ground that when she underwent the M.Phil Degree in the academic year 2007- 2008, the same has been approved by the UGC.

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.

4. Per contra, the learned Government Advocate appearing for the official respondents pointed out that under G.O(Ms)No.91, Higher



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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 2 to 5 herein are directed to refund the incentive increment that was recovered from the writ petitioner during her service. This said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

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

There shall be no order as to costs.

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

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2. The Director of School Education,
College Road,
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3. The Regional Accounts Officer,
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R.VIJAYAKUMAR,J.

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