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W.P.No.1437 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2024

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THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.1437 of 2024

and

W.M.P.No.1464 of 2024

P.Venkatachalam

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Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Secretariat, Chennai.

2. The Director of School Education,
O/o. The Director of School Education,
College Road,
Chennai – 6.

3. The Chief Educational Officer,
O/o. The Chief Educational Office,
Erode, Erode District.

4. The Headmaster,
Government Higher Secondary School,
Ezhamathur,
Modakurichi Taluk,
Erode District.

5. The Registrar,
Vinayaga Missions University,
Ariyanoor,
Salem – 636 308.

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Respondents



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Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, directing the respondents to repay the incentive increment paid by the petitioner and consequently to direct the respondent to continue to pay the incentive increment to the petitioner for having acquired the M.Phil degree in Vinayaga Missions University by considering the petitioner's representation dated 21.12.2023 within the time that may be stipulated by this Court.

For Petitioner : Mr.L.Calvin Jones
For R1 to R4 : Mr.S.Arumugam
Government Advocate

ORDER

This Writ Petition has been filed for a direction directing the respondents to continue to pay the incentive increment to the petitioner for having acquired M.Phil., degree in Vinayaka Missions University.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 to 4 and perused the materials available on record.

3. The petitioner was appointed as BT Assistant on 27.07.2004 on agreement basis. On 01.06.2006, he was appointed on



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regular basis in the Government Higher Secondary School, Ezhamathur, Modakurichi Taluk, Erode District. The petitioner had completed his M.Phil (Chemistry) in Vinayaka Missions University. Therefore, he is entitled to be granted incentive increment. Accordingly, he was granted incentive increment for possession of M.Phil Degree on 18.01.2013. By the proceedings dated 10.01.2017, the fourth respondent ordered to repay the amount to the tune of Rs.1,29,832/- on the ground that the M.Phil., degree awarded by the Vinayaka Missions University is not recognized by the State Government. In the year 1985, the Indira Gandhi National Open University Act, 1985 (hereinafter referred to as “the IGNOU Act”) was enacted to establish and incorporate Open University at the national level, for the introduction and promotion of distance education systems in the educational pattern of the country and for co-ordination and determination of standards in such systems.

4. Thereafter, Vinayaka Missions University has been declared by the Central Government as an Institution deemed to be an University as contemplated under Section 3 of the UGC Act, 1956 vide Notification No.F9-17/93-U.3 dated 01.03.2001. Therefore, the degree awarded by the Vinayaka Missions University stands automatically



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recognized by the Government of India for the purposes of employment under the Central Government. In fact, the Distance Education Council accorded post-facto approval to Vinayaka Missions University on 07.08.2007 for admission till the year 2005 to run the programme, through distance mode. It was accorded post-facto approval on the recommendation of the Joint Committee of UGC-AICTE-DEC as per the decision taken in its meeting held on 07.08.2007. The said University was also granted recognition for five years with effect from 28.02.2007 to 27.02.2012 by the Distance Education Council. Therefore, the degree obtained from the fifth respondent is a genuine one. The UGC Regulations which have come into force with effect from 17.07.2009 provides that M.Phil., and Ph.d., degrees shall henceforth not be conferred through the system of Distance Education. The UGC issued a Circular dated 14.10.2013 that the Degrees/Diplomas/Certificates awarded for programmes conducted by the Open Distance Learning Institutions, recognized by the DEC and UGC in conformity with UGC notification on specification of degrees should be treated as equivalent to the corresponding awards of the degree/diploma/certificate of the Traditional Universities/Institutions in the country.



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5. Accordingly, the Government of Tamil Nadu issued an order in G.O.Ms.No.39, dated 30.04.2014, whereby an amendment has been made in Rule 19 Schedule II. Accordingly, 655 Universities /Higher Education Institutions throughout the country have been included in the said Schedule II of Rule 19, wherein, the said University had already been included at S.No.523. Therefore, the petitioner filed a writ petition in W.P.No.3432 of 2017 as against the order to recover and revision of pay. However, it was subsequently withdrawn by the petitioner.

6. The very same issue has been dealt with the Hon'ble Division Bench of this Court in W.A.Nos.2328 of 2018 and the Division Bench of this Court, vide its order dated 04.08.2023, quashed the recovery order to the extent that those teachers who had studied in the Vinayaka Missions University during the relevant point of time, i.e., 2007 to 2009 and since had acquired the qualification during the period which the University also enjoyed the approval or recognition from the DEC, IGNO, the said rejection raised by the Audit Department would not be sustained.



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7. The relevant portion of the order reads as follows :-

“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 Missions 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, INGO, the said objection raised by the audit Department would not be sustained. Therefore, on that ground, the incentive increment already allowed to those teachers need not be disturbed. If the increment already been allowed to these teachers have been canceled 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.”.

8. Pursuant to the said order, the petitioner submitted a representation, which is pending on the file of the third respondent.



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9. In view of the above, the third respondent is directed to consider the representation submitted by the petitioner in the light of the observation made by the Division Bench of this Court in W.A.Nos.2328 of 2018 and etc., dated 04.08.2023 and pass orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.

10. With the above direction, this Writ Petition stands disposed of. Consequently, connected miscellaneous petition is closed.
No costs.

24.01.2024

Internet : Yes
Index : Yes/No
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To

1. The Secretary to Government,
School Education Department,
Secretariat, Chennai.

2. The Director of School Education,
O/o. The Director of School Education,
College Road, Chennai – 6.



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3. The Chief Educational Officer,
O/o. The Chief Educational Office,
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Erode District.

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Government Higher Secondary School,
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