



WEB COPY



W.P.No.14746 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.14746 of 2020
and W.M.P.Nos.18323 & 18325 of 2020

D.G.Raja Ganesh

Vs.

... Petitioners

- 1.The Regional Accounts Officer (Audit),
Department of School Education,
L.L.A Building 3rd Floor,
Big Bazaar Street, Town Hall,
Coimbatore – 641 001.
- 2.The Chief Educational Officer,
Dharmapuri District,
Dharmapuri – 636 701.
- 3.The District Educational Officer,
Dharmapuri District,
Dharmapuri – 636 702.
- 4.The Headmaster,
Government Boys Higher Secondary School,
Morapur, Harur Block,
Dharmapuri District – 635 305.
- 5.Vinayaka Missions University,
Rep. by its Registrar,
NH-47, Sankari Main Road,
Ariyanoor, Salem District – 636 308.

... Respondents



W.P.No.14746 of 2020

WEB COPY

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the first respondent having reference No.2186/E1/2019 dated 05.10.2019 objecting to the grant of second incentive pay to the petitioner who is working as B.T.Assistant in the Government Boys Higher School, Morapur, Harur Block, Dharmapuri District on the ground that the petitioner is not eligible for second incentive for the M.Phil Degree obtained from the fifth respondent University through distance mode and ordering recovery of a sum of Rs.1,40,486/- from the salary of the petitioner and quash the same as illegal and consequently direct the 2nd and 4th respondents to continue to pay the second incentive amount to the petitioner for having acquired M.Phil degree along with his salary.

For Petitioner : M/s.C.Uma

For Respondents 1 to 4 : Mr.T.M.Rajangam,
Government Advocate

For Respondent 5 : No appearance

ORDER



W.P.No.14746 of 2020

This writ petition has been filed to call for the records of the first respondent having reference No.2186/E1/2019 dated 05.10.2019 objecting to the grant of second incentive pay to the petitioner who is working as B.T.Assistant in the Government Boys Higher School, Morapur, Harur Block, Dharmapuri District on the ground that the petitioner is not eligible for second incentive for the M.Phil Degree obtained from the fifth respondent University through distance mode and ordering recovery of a sum of Rs.1,40,486/- from the salary of the petitioner and quash the same as illegal and consequently direct the 2nd and 4th respondents to continue to pay the second incentive amount to the petitioner for having acquired M.Phil degree along with his salary.

2. The case of the petitioner is that the petitioner was appointed and working as B.T.Assistant in Government Higher Secondary School, Nellurpattai, Vellore District on contract basis on consolidated pay. On 01.06.2006, his service was regularized and was given regular scale of pay and thereafter, he was transferred to Government Boys Higher Secondary School, Morapur, Arur Block, Dharmapuri District. During the employment, in order to qualify himself further, he joined in the M.Phil degree course at



Vinayaka Missions University during the year 2008-09 and complete the said course.

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. 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.

4. Since the petitioner has acquired the said qualification of M.Phil as an additional qualification, he sought for such additional incentive increment, which was considered and granted by the Department with effect from 18.01.2013. After some time, when internal audit has taken place, the audit team having found that the petitioner was given such incentive increments, and an objection was raised by the audit team regarding eligibility of the petitioner to obtain incentive based on M.Phil obtained through Distance Mode from Vinayaka Missions University. As a result of which, since the petitioner was facing the recovery from the Department. Challenging the said



W.P.No.14746 of 2020

order dated 05.10.2019, the petitioner has come forward with the present writ petition.

5. When the matter was taken up for hearing, learned counsel for the petitioner places reliance on the judgment passed by the Division Bench of this Court in W.A.Nos.2328 of 2018 and Batch, dated 04.08.2023, wherein this Court has approved the M.Phil., degree obtained from the Vinayaka Missions University.

6. Learned Government Advocate appearing for respondents 1 to 4 has filed a counter affidavit on behalf of the second respondent on 05.01.2021.

7. Learned Government Advocate appearing for the respondents 1 to 4 submitted that the Vinayaka Missions University has been declared by the Central Government as an Institution 'Deemed to be University' under Section 3 of the University Grants Commission Act, 1956, the degrees/diplomas awarded by it stand automatically recognized by the Government of India for the purpose of employment under the Central Government. But in the counter



W.P.No.14746 of 2020

affidavit filed by the fifth respondent in W.P.No.42675 to 42687 and 42689 of 2016, it has been clearly specified that “*Deemed Universities declared under Section 3 of the University Grants Commission Act are not empowered to conduct any courses through distance education mode without the permission of the Government of India/University Grants Commission*”. Accordingly, the contention of the writ petitioner is wrong, as the Vinayaka Missions Deemed University is running M.Phil Degree Course through Open University Mode without permission from Central Government/University Grants Commission.

8. Heard the learned counsel on either side and perused the materials available on record.

9. In the case on hand, the issue to be decided is to whether the petitioner is eligible for second incentive for the M.Phil Degree obtained from Vinayaka Missions University through distance mode. However, in this regard, the Division Bench of this Court has already laid a dictum in W.A.Nos.2328 of 2018 and etc., Batch dated 04.08.2023. For better appreciation, the relevant portion of the judgment is extracted hereunder:



WEB COPY



W.P.No.14746 of 2020

“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, IGNO, the said objection raised by the audit Department would not be sustained. Therefore, on that 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.”

10. It is pertinent to mention that the petitioner has acquired M.Phil., degree from the Vinayaka Missions University in the year 2008-2009 and the above judgment of the Hon'ble Division Bench is squarely applicable to the case of the petitioner.

11. In view of the aforesaid judgment passed by the Division Bench of



W.P.No.14746 of 2020

this Court in W.A.Nos.2328 of 2018 and etc., Batch dated 04.08.2023, the order passed by the first respondent in reference No.2186/E1/2019 dated 05.10.2019 is liable to be quashed and the same is hereby quashed.

12. Consequently, this Court directs the respondents 2 & 4 to continue to pay the second incentive amount to the petitioner for having acquired M.Phil Degree along with his salary. In regard to arrears, the respondents 2 & 4 are directed to settle the same within a period of six weeks from the date of receipt of a copy of this order.

13. At the time of admission, this Court in W.M.P.No.18325 of 2020 dated 14.10.2020 has granted an order of stay of recovery alone. If any amount is recovered from the petitioner, this Court directs the respondents to reimburse/refund the same to the petitioner as expeditiously as possible.

14. In the result, this writ petition is allowed with the aforesaid observation and directions. No costs. Consequently, connected miscellaneous petitions are closed.



W.P.No.14746 of 2020

13.12.2024 (vm)

Index : Yes/No
Speaking Order : Yes/No

To:

- 1.The Regional Accounts Officer (Audit),
Department of School Education,
L.L.A Building 3rd Floor,
Big Bazaar Street, Town Hall,
Coimbatore – 641 001.
- 2.The Chief Educational Officer,
Dharmapuri District,
Dharmapuri – 636 701.
- 3.The District Educational Officer,
Dharmapuri District,
Dharmapuri – 636 702.
- 4.The Headmaster,
Government Boys Higher Secondary School,
Morapur, Harur Block,
Dharmapuri District – 635 305.
- 5.Vinayaka Missions University,
Rep. by its Registrar,
NH-47, Sankari Main Road,
Ariyanoor, Salem District – 636 308.



WEB COPY



W.P.No.14746 of 2020

J.SATHYA NARAYANA PRASAD,J.

vm

W.P.No.14746 of 2020



WEB COPY



W.P.No.14746 of 2020

13.12.2024