IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No.2729 of 2017
and WMP.Nos.2678, 2679 and 7070 of 2017

V.Parimalam ... Petitioner

Vs.

1.The Chief Educational Officer,
Coimbatore District
Coimabtore – 641 001.

2.The Headmaster
Government Boys Higher Secondary School,
Ondiputhur,
Coimbatore – 641 016.

3.The Regional Accounts Officer (Audit)
School Education Department
Coimbatore. ... Respondents

Prayer : Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 2nd respondent in Na.Ka.No.176/2016 dated 02.11.2016 and to quash the same and consequently direct the respondents to issue No Objection Certificate (NOC) to the petitioner for getting her retirement benefits and pension forthwith.

For Petitioner : M/s.Kaviya
for Mr.S.Nedunchezhiyan.
For Respondents : Mr.L.S.M.Hasan Fizal, AGP.

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents and perused the materials available on record.

2. The case of the petitioner is that she was working as PG Assistant (Maths) in Government Boys Higher Secondary School, Ondipudur, Coimbatore from 20.09.1989. She acquired the qualification of M.Phil degree through distance education from Vinayaka Missions University during December 2009. On acquiring the higher qualification of M.Phil degree she was sanctioned with an incentive increment. Subsequently, the petitioner attained the age of superannuation on 30.06.2016, since her date of retirement falls during the middle of the academic year, she was given re-employment on superannuation till the end of the academic year i.e, upto 31.05.2017.

3. After sometime, when internal Audit was conducted and in the auditing raised an objection against sanctioning of incentive increment granted to the petitioner for acquiring M.Phil degree from the year 2010, on the ground that the M.Phil degree obtained from the Vinayaka Missions University is not valid. Accordingly, the second respondent issued the impugned proceedings in Na.Ka.No.176/2016 dated 02.11.2016 to recover the incentive increment granted in

favour of the petitioner from 01.01.2010 to 31.05.2016 to a sum of Rs.2,99,974/- by calling upon the petitioner to remit the same in Government account immediately.

4. A counter affidavit has been filed on behalf of the respondents. It is averred in the counter affidavit that while the pay of the petitioner refixed after sanction of the incentive increment by the 2nd respondent, on condition, that if any objection is raised in future by the audit authorities, she has to refund the amount in one instalment to the Government account immediately. The petitioner has also given a consent to that effect. As the 3rd respondent raised the objection vide his letter na.ka.No.1314/e3/2016 dated 31.05.2016 stating that the petitioner is not eligible for getting incentive increment for acquiring M.Phil degree qualification in Vinayaka Missions Deemed University, Salem through distance education and the excess pay drawn by the petitioner has to be remitted in the Government account. To implement the audit objection the 2nd respondent issued proceedings vide na.ka.No.176/2016 dated 02.11.2016 to remit a sum of Rs.2,99,974/- being the incentive amount granted to the petitioner for having possessed M.Phil degree. Instead of remitting the excess amount drawn, the petitioner has approached this Court and obtained the interim stay order for recovery of the said amount. In order to rectify the Audit objection, the 2nd respondent insisted the petitioner to remit the over payment amount to the Government.

5. The learned counsel for the petitioner submits that the Vinayaka Missions University is part of the Vinayaka Missions Research Foundation, Salem was considered to be deemed to be University and approval given by the UGC. As such, the M.Phil degree obtained by the petitioner from the said University is valid and legal. The learned counsel further contends that the petitioner joined in the M.Phil degree course at Vinayaka Missions University during the year 2009 and completed the said course in the year 2010. The duration of the said course is one year. At the relevant point of time, from 2007-2012 the University was given institution wise recognition. As such, the M.Phil degree obtained by the petitioner is valid.

6. The learned counsel for the petitioner further contends that the doubt that has arisen by auditing which has been shown as the reason that the petitioner had obtained the M.Phil degree from Vinayaka Missions University cannot be a valid degree and the incentive increment granted in favour of the petitioner has been stopped and the amount proposed to be recovered cannot have any legal backing, in view of the notification issued by the Government of India which has been published in the Gazettee of India dated 08.04.1995.

7. The learned Additional Government Pleader advanced his arguments as per the averments made in the counter affidavit.

8. Having considered the averments of the learned counsel on either side and after perusing the impugned order, it appears that the auditing has raised the objection that the M.Phil degree possessed by the petitioner from the Vinayaka Missions University cannot be an approved degree and it cannot be accepted as valid degree for the purpose of awarding any advance incentive increment. To implement the audit objections, the 2nd respondent issued an order dated 02.11.2016, directing the petitioner to remit the said amount to the Government account.

9. The learned counsel for the petitioner had drawn the attention of this Court to the common judgment dated ***04.08.2023*** in ***WA.No.2328 of 2018 & batch***, contending that the issue raised in the present writ petition has already been decided by the Division Bench of this Court.

10. The Division Bench while allowing the batch of writ appeals in identical circumstances, taken into consideration the notification issued by the Government Of India which has been published in Gazettee of India dated 08.04.1995 and notification issued by the Government of India on 19.08.2004, wherein the Vinayaka Missions University part of Vinayaka Mission's Research Foundation, Salem was considered to be deemed to be University and as such, the approval given by the UGC has been made clear in this proceedings.

11. The relevant paragraph 35 of the judgment is extracted hereinunder :-

"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-s 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."

12. In the present case also, the petitioner had studied in the Vinayaka Missions University during the relevant point of time and had acquired M.Phil degree. As such, the order of the Division Bench is squarely applicable to the facts

of the present case and the objections raised by the Audit department would not sustain. Accordingly, the order impugned in this writ petition also would not sustain and it is liable to be set aside.

13. For the reasons stated above, this writ petition is allowed with the following directions :-

(i) The impugned order in Na.Ka.No.176/2016 dated 02.11.2016 issued by the 2nd respondent is hereby set aside.

(ii) If the increment already been sanctioned to the petitioner has been cancelled or stopped by virtue of the impugned order and arrears to that effect shall be calculated and be paid to the petitioner.

(iii) There shall be no order as to costs.

(iv) Consequently, connected miscellaneous petitions are closed.

01.02.2024

Index :Yes/No
Neutral Citation :Yes/No
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BATTU DEVANAND, J.

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