



W.A(MD)No.518 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2024

CORAM :

**THE HONOURABLE MR.JUSTICE R.SURESHKUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.518 of 2024
and
CMP(MD)No.4089 of 2024**

1. The Director of School Education,
College Road,
Nungampakkam,
Chennai-06.

2. The Chief Educational Officer,
Theni District.

3. The District Educational Officer,
Uthamapalayam,
Theni District.

... Appellants

vs.

1. P.Sarumathi

2. Kanakku Velayee Amaravathi Ammal (KVA),
Girls Higher Secondary School,
Chinnamanur,
Theni District.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent, against the order dated 22.11.2023 made in W.P(MD)No.18350 of 2020.



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For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader

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JUDGMENT

(Judgment of the Court was made by **R.SURESHKUMAR, J.**)

This appeal has been directed against the order of the Writ Court dated 22.11.2023 made in W.P(MD)No.18350 of 2020.

2. The 1st respondent/writ petitioner as a P.G. Assistant (Commerce), challenged the order of the 3rd appellant who cancelled the advance incentive increment granted to her for having undergone and secured an additional course or qualification i.e., M.Phil degree from Vinayaga Mission University.

3. The reason for such denial of advance incentive increment, for which, the writ petitioner was otherwise eligible, is because such M.Phil qualification acquired by the teacher is from Vinayaga Mission University which did not enjoy the recognition or approval of the University Grants Commission.

4. However, the fact remains that during a particular period, the said University had enjoyed the approval or recognition of the University Grants



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Commission or IGNOU as the case may be, who are otherwise empowered to give such approval or recognition to conduct distance education programme by the University concerned.

5. This issue had been considered and decided by a Division Bench of this Court in **S.Sivan vs. The Regional Accounts Officer, Coimbatore and others in a batch of writ appeals W.A.No.2328 of 2018 etc., batch., dated 04.08.2023**, where one of us (R.SURESHKUMAR, J.) is a party.

6. In the said judgment, the Division Bench has considered this aspect thoroughly including G.O(Ms).No.91, Higher Education Department, dated 03.04.2009, and accordingly the benefit has been directed to be extended to those who secured the higher qualification from that University from a particular point of time where the University enjoyed the approval or recognition of the University Grants Commission.

7. In fact, the Division Bench judgment cited supra in **Sivan's case** has been applied by the learned Judge in the impugned judgment and allowed the said writ petition.



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8. Assailing the said judgment, Mr.D.Sadiq Raja, learned Additional Government Pleader for the appellants would contend that in G.O(Ms).No.91, Higher Education Department, dated 03.04.2009, in paragraph 3, the following has been stated by the Government:

"The Government have now examined the matter in detail and hereby declare that the M.Phil and Ph.D degrees obtained through the Correspondence/Distance Education/Open University System are ineligible for Government appointments and appointment as Lecturers in Colleges/Universities including self-financing colleges."

9. Relying upon the import of the G.O(Ms).No.91, Higher Education Department, dated 03.04.2009, learned Additional Government Pleader would submit that even though G.O(Ms).No.91 was issued mainly declaring that the M.Phil and Ph.D degrees obtained through the Correspondence / Distance Education / Open University System are ineligible for Government appointments, that covers not only the particular University from where the teacher secured the M.Phil degree, but also all other Universities where such degrees are awarded through correspondence education. Therefore, it should have a universal application to all the candidates like the writ petitioner. Therefore, to that extent, he wants to distinguish the said judgment of the Division Bench judgment in **Sivan's case** (cited supra).



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10. We are not impressed with the said submission made by the learned Additional Government Pleader appearing for the appellants for the simple reason that the Division Bench has specifically considered the import of G.O(Ms).No.91, Higher Education Department, dated 03.04.2009 at paragraphs 33 and 34 of the judgment in **Sivan's case** (cited supra) and has held as follows:-

"33. In this context, the learned Government Pleader appearing for the State has relied upon the G.O.Ms.No.91, Higher Education Department, dated 03.04.2009 and has stated that the Government by the said G.O, declared that the M.Phil and Ph.D degree obtained through the correspondence or Distance Education or Open University system are ineligible for Government appointments and appointment as lecturers in colleges or Universities including self-financing colleges, therefore the import of the said G.O.Ms.No.91, dated 03.04.2009 if it is implemented that will stand in the way for extending the benefit of advance incentive increment to the teachers.

34. However, the said submission made by the learned Government Pleader is liable to be rejected because, the said G.O has only mentioned about the eligibility for a person to get employment. Here, the teachers, as per earlier qualification acquired already, been appointed as teachers or lecturers and the benefit now questioned is only the grant of advance incentive increment for having acquired the higher qualification. Therefore, the G.O.Ms.No.91 dated 03.04.2009 issued by



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the Higher Education Department does not deal with anything about the allowing of advance incentive increment to the teachers, who acquired higher qualification, therefore, that argument made by the learned Government Pleader also is to be rejected and accordingly, it is rejected."

11. Therefore, the said consideration which was made by the Division Bench in **Sivan's case** (cited supra) is pertaining to the degree secured by many candidates from Vinayaga Mission University during the relevant point of time through correspondence education whether would be entitled to seek for advance incentive increment or not. Therefore, the declaration what has been made under G.O(Ms).No.91 cannot be applied to the case of advance incentive increment seekers like the writ petitioner/1st respondent. Therefore, such an argument advanced by the learned Additional Government Pleader is to be rejected and accordingly rejected.

12. Resultantly, since the issue is covered by the said Division Bench judgment in **Sivan's case**, the order passed by the Writ Court which is impugned herein dated 22.11.2023 made in W.P(MD)No.18350 of 2020 is to be sustained. Accordingly, this Writ Appeal is to be rejected and hence it is dismissed. No costs. In view of the dismissal of the writ appeal, the direction given by the Writ Court through the impugned order shall be complied with by



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the appellants within a period of three months from the date of receipt of a copy of this judgment. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.)

(G.A.M., J.)

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Index : Yes / No
Neutral Citation : Yes / No
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